

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Misc. No.M-17165-2021(O&M)

Date of Decision: September 20, 2021

Gulshan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr. Lekh Raj Sharma, Advocate for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

-

HARINDER SINGH SIDHU, J.

Present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case FIR No. 580 dated 07.08.2020, under Sections 376-D and 342 IPC (later on converted to Section 376 IPC) registered at Police Station HTM, District Hisar

The FIR was lodged on the complaint of the prosecutrix aged 41 years. She stated that she had come to India from Thailand as a tourist on 3.3.2020. Her Visa was valid upto 04.09.2020. She first stayed in Delhi for some time. She then came to Hisar by taxi. Her friend Nicha was also with her. After reaching Hisar, she stayed at Lazeez Hotel on 05.08.2020. On 06.08.2020, she stayed at Regency Hotel, Hisar, where she was visited by her friend Nalintip. On the same day, at about 10.00 p.m., her friend Moto took her to have drinks in his car, Nalintip was also with them. One Isaan came in an Audi Car. Thereafter, they all alongwith one more person drank beer in his car. As the prosecutrix was inebriated and feeling sleepy and

wanted to have rest, Moto dropped her in Regency Hotel at about 2:30 a.m. Managers Amit and the petitioner-Gulshan and one other person left her in her room. After that the petitioner came to the room and had sexual relations with her without her consent. After he left the room, one more person reached her room and tried to have physical relation with her. But he ran away when the prosecutrix threatened to call the police. She came out of the room, but could not go outside as the main door of the hotel was locked. She telephoned her friends Moto and Nalintip and narrated the entire incident to them. She waited for 40 minutes. When some customers wanted to go outside then the Managar of the hotel opened the door and she ran away from there and sat in the park. There two persons saw her crying. She narrated the incident to them. They then called the police. She narrated the entire incident to the police. Meanwhile, her friends Nalintip and Moto also arrived.

Ld. Counsel for the petitioner has contended that the allegations against him are totally false. There is no evidence of forcible rape. He has referred to the medico- legal report of the prosecutrix conducted on 7.8.2020 to state that there was no external injury on her person. There was no congestion, no tenderness, no bleeding from perineal area and the vaginal orifice. He states that the petitioner is a young man and is in custody since 8.8.2020. The investigation in the case is complete. The trial of the case will take a long time to conclude and no useful purpose will be served by keeping the petitioner in custody till the conclusion of the trial.

It is not possible to accept the contentions of the Ld. Counsel. A perusal of the report under Section 173 submitted by the police reveals that not only has the prosecutrix named the petitioner in her initial complaint, she

has also named him in her statement u/s 164 Cr.P.C. recorded on 10.08.2020. During the test identification parade she also stated that cook Mukesh did not do anything wrong with her. In fact he had helped her. Only the petitioner did the wrong act with her.

The Medical examination of the petitioner was got conducted from GH Hisar on 8th August, 2020 at 9.57 AM. As per the medical report.

“Two reddish abrasions of size 0.5 cm x 0.2 cm over the left forearm and a reddish abrasion of size 1cm x 0.2 cm over the right elbow joint.

Adv. Orthopedic Surgeon's Opinion.

Penis and Scrotum are normal. Secondary sexual characters present, Public hair present, Smegma absent.

A reddish coloured T-shirt, Blue colored Jeans and a Brown colored underwear worn by the person examined is taken and sealed by seals and handed over to Police.

2nd Blood Sample for DNA analysis taken as requested by Police.

Inference: In my opinion physically there is nothing to suggest that the person concerned is incapable of performing the sexual intercourse.”

The abrasions found on the left forearm and the right elbow of the petitioner which have been opined to be within 24 hours are unexplained. The absence of smegma, though may not be decisive but also is suggestive of rape/ intercourse within 24 hours. In this case the petitioner was medically examined at about 9.37 AM on 8.8.2020 i.e., within about 30 hours of the alleged incident.

The argument of the petitioner about the absence of marks of violence on the body of the prosecutrix cannot advance his case because it

has been repeatedly held that the absence of injury on the body of the prosecutrix is not a factor to disregard the allegations of rape if otherwise credible.

During medical examination of the prosecutrix two vaginal swabs were taken for semen detection. Two vaginal swabs were taken for DNA analysis. The blood sample of the petitioner has also been taken for DNA analysis. The report is yet awaited.

The allegations against the petitioner are serious. The petitioner has been specifically named by the prosecutrix. Soon after the incident she narrated the same to her friends Nalintip and Moto. She is a foreign national. There is no reason why she would falsely implicate the petitioner. No ground is made out for grant of bail to the petitioner at this stage.

Petition dismissed.

September 20, 2021

gian

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No