

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

213

**CRM-M-19392-2021
Decided on : 05.10.2021**

Shokin

. . . Petitioner(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Surinder Mohan Sharma, Advocate
for the petitioner(s).

Ms. Tanushree Gupta, DAG, Haryana
assisted by SI Kamal.

Mr. Jamshed Ahmed, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 80, dated 14.03.2020, under Sections 365, 376-D, 506 of IPC, registered at Police Station Punhana, District Nuh.

Learned counsel for the petitioner *inter alia* submits that the prosecutrix was admittedly a major on the date of alleged occurrence i.e. 10.03.2020 and had of her own accord accompanied co-accused Hamid, as there was an affair going on between them. Further submits that since the petitioner was a friend of said Hamid and was present when the prosecutrix accompanied the latter on 10.03.2020, he had been implicated in the alleged crime. Learned counsel while inviting the attention of this Court to the contents of the FIR (annexed with the petition) has submitted that it was the admitted case of the complainant (father of the prosecutrix) himself that on 10.03.2020, when the prosecutrix along with her sister-in-law (Bhabi) had gone to answer the call of nature, she was allegedly kidnapped by Hamid and

two others in a white swift Dzire car bearing registration No.HR-37-1530 and soon thereafter, on return home, the sister-in-law had disclosed about the occurrence to his wife. Learned counsel has submitted that in the above background, it failed to appeal to reason, as to what prevented the complainant from reporting the occurrence to the police or even lodging a missing report particularly when the registration no. of the vehicle as well as the name of the accused, Hamid had been brought to his notice by his daughter-in-law, who was present at the time of alleged kidnapping. Learned counsel further submitted that the unnatural conduct of the complainant in keeping quiet and the unexplained delay of four days in lodging of the FIR, clearly hinted at an exaggerated and false version having been brought forth against the petitioner.

Learned counsel has further invited the attention of this Court to the MLR of the prosecutrix, which was filed and taken on record today, subject to all just exceptions. It has been submitted that had it been a case of gang-rape as alleged, the attending Doctor would have noticed some injuries, both internal and external, on the person of the prosecutrix, which, however, was not so in the case in hand. Learned counsel has submitted that had it been a case of gang-rape, the prosecutrix would have surely put up some resistance, which would have resulted in external injuries on her person. Still further, he has submitted that the Doctor had noted in the MLR that the vaginal orifice was mildly loose and there was no pain, tenderness, oedema, redness or congestion seen and noticed, during the internal examination of the prosecutrix from which it was discernible that a false case had been planted upon him and no gang-rape as alleged had taken place.

A prayer has, therefore, been made to extend the concession of bail to the petitioner, as he has been in custody since 05.10.2020 and the material witness i.e. prosecutrix stands examined. Learned counsel submits

that in the circumstances his further incarceration would not serve any purpose, as the trial is unlikely to conclude in the near future, as 08 prosecution witnesses remain to be examined.

Per contra, learned State counsel assisted by learned counsel for the complainant, while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from SI Kamal, has apprised the Court that the prosecution evidence is underway and the material witness i.e. prosecutrix stands examined, who has supported the case of the prosecution. She has conceded that during the investigation it had come to light that the prosecutrix was not a minor on the date of alleged occurrence as had been stated by the complainant father while registering the FIR in question. She has further submitted that there are specific allegations levelled against the petitioner of conniving with co-accused Hamid in kidnapping the prosecutrix, who was thereafter subjected to gang-rape.

The learned State counsel, as well as the learned counsel for the complainant however have not been able to controvert the findings given by the Doctor in the MLR of the prosecutrix. In addition, the learned State counsel has also not been able to controvert the factum of a delay of 04 days in the lodging of the FIR in question.

I have heard learned counsel for the parties and perused the material on record.

The petitioner has been in custody since 05th October, 2020 and the material witness i.e. prosecutrix stands examined. The trial would take sometime to conclude, as 08 more prosecution witnesses remain to be examined. Hence, in the facts and circumstances of the case as enumerated hereinabove, I deem it a fit case to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail

to the satisfaction of trial Court/Duty Magistrate. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

October 05, 2021

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No