

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

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**CRM-M-26369-2021
Decided on : 23.09.2021**

Ankit

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Suneel Ranga, Advocate
for the petitioner(s).

Mr. Gagandeep Singh Chhina, AAG, Haryana
assisted by SI Karambir.

MANJARI NEHRU KAUL, J. (Oral)

This is the third petition filed under Section 439 Cr.P.C. *inter alia* seeking grant of bail to the petitioner, in case FIR No. 125, dated 04.07.2019, registered under Sections 363, 366-A of IPC (Section 376 of IPC and Section 4 of the POCSO Act, 2012, added later on), lodged at Police Station Sanoli, District Panipat.

The previous petition filed by the petitioner was dismissed as withdrawn vide order dated 22nd February, 2021.

Learned counsel for the petitioner submits that the petitioner has been in custody since 20th July, 2019 in a case of false implication. While inviting the attention of this Court to the FIR in question, learned counsel for the petitioner submits that the complainant, who is the brother of the prosecutrix had levelled allegations against one Akshay of enticing away his sister, a student of 09th class, aged about 16 years on the pretext of solemnization of marriage. Further submits that said Akshay was found innocent during investigation and placed in Column No.2. Learned counsel further submits that subsequently when the victim was recovered, in her

statement recorded under Section 164 Cr.P.C., she, for the first time levelled allegations against the petitioner and other co-accused of sexually assaulting and violating her person.

Learned counsel for the petitioner further submits that the contrary versions given in the FIR as well as in the statement recorded under Section 164 Cr.P.C., clearly hint at the false implication of the petitioner, inasmuch as, at the time of recording of the FIR, neither was the petitioner named nor any allegation levelled against him by the complainant.

Learned counsel further submits that after examination of 07 witnesses out of 17 prosecution witnesses cited, an application under Section 319 Cr.P.C. was moved by the prosecution for summoning the other accused persons, who had been found innocent by the investigating agency. He submits that in the circumstances, the trial shall commence *de novo* and there is, thus, no likelihood of the trial concluding anytime in the near future.

Per contra, Learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions from SI Karambir, has apprised the Court that when the prosecutrix stepped into the witness-box as PW-6, she reiterated the allegations of rape not only against the petitioner, but also against the co-accused, who had been placed under Column No.2. He further submitted the medical evidence corroborated the allegations of rape. Further submitted that the submissions made by the counsel opposite that in the FIR no allegations were levelled against the petitioner, much less, of any rape would not come to his rescue, inasmuch as, the said FIR was not registered on the statement of the victim, but on the statement of the brother of the victim, wherein, he had raised a suspicion *qua* the involvement of co-accused Akshay in enticing away his minor sister on the pretext of marriage.

Learned State counsel has further submitted that in the case in

hand, the statement of the victim recorded under Section 164 Cr.P.C., would be

more relevant, as she had given a detailed account of the role played by each of the accused in the crime in question. Learned State counsel while inviting the attention of this Court to her statement recorded under Section 164 Cr.P.C., submitted that the prosecutrix had categorically stated that not only was she raped by co-accused Akshay, but she was repeatedly raped by the present petitioner as well. He has submitted that it is precisely for this reason an application was moved under Section 319 Cr.P.C. by the prosecution for summoning the other accused to face trial along with the petitioner, which had since been allowed.

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

Prima facie, there are categoric and specific allegations of rape levelled against the petitioner by the victim both in her statement recorded under Section 164 Cr.P.C. as well as in her deposition before the trial Court. Therefore, in the facts and circumstances of the case as enumerated hereinabove, this Court does not deem it a fit case to extend the concession of bail to the petitioner. Petition stands dismissed accordingly.

It is, however, 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

September 23, 2021

J.Ram

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