

CRM-M-23660-2020

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

(PROCEEDINGS THROUGH V.C.)

CRM-M-23660-2020

Date of Decision: 08.02.2021

Nasim

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Gautam Dutt, Advocate, for the petitioner.

Ms. Shubhra Singh, Addl. A.G., Punjab.

Mr. Saleem Ahmed, Advocate, for the complainant.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court for grant of regular bail by filing this second petition under Section 439 of the Code of Criminal Procedure, 1973, in FIR No.221, dated 21.06.2019, registered at Police Station Punhana, District Mewat, under Sections 323, 376-D, 452 & 506 of the Indian Penal Code (subsequently Section 376-D of IPC deleted and Section 376 of IPC added).

Counsel for the petitioner contends that initially when the FIR has been recorded and that too, after a period of two days i.e. on 21.06.2019, allegations which have been put forth by the prosecutrix were against not only petitioner – Nasim but one Junaid also, where the allegations are identical i.e. that both of them had scaled the wall of the house on 19.06.2019 at about 1.30 AM and thereafter, raped her and also gave her kicks and fist blows when she protested and threats to kill her were also

extended. This all happened while she was alone in the house and her parents along with other family members had gone out to attend a marriage. It is only after they returned, the FIR was registered. He asserts that in the statement under Section 164 of the Code of Criminal Procedure, which has been recorded, the allegations against the petitioner as well as Junaid have come forth but during investigation, the Investigating Agency has found Junaid to be innocent and challan has only been presented against the petitioner by converting Section 376-D to 376 IPC. Apart from that, referring to the Medico Legal Report, dated 21.06.2019, he asserts that there is no external injury on the person of the prosecutrix. Reference with regard to the report of the FSL has also been made to assert that presence of semen in the vaginal swab has also not been found. He submits that since the petitioner is in custody from the date of his arrest i.e. 19.12.2019 with the charge having been framed on 16.12.2020 and the trial not proceeding which is likely to take some time, prayer has been made for grant of regular bail to the petitioner.

On the other hand, learned counsel for the State as well as counsel for the complainant have opposed the bail application of the petitioner on the plea that the delay of two days in registration of FIR has been amply explained as the prosecutrix was only 18 years of age and was alone in the house. It is only after the return of her family members, the incident was narrated to them leading to the registration of FIR. With regard to the FSL report and the Medico Legal Report, it has been asserted that it is probably because of the delay of two days, nothing has come forth in this regard. However, the fact that Junaid has been found to be innocent

during investigation could not be disputed by them including the period of custody and the stage of trial, which has been fixed for recording the prosecution evidence on 01.03.2021.

Having considered the submissions made by the learned counsel for the parties and keeping in view the fact that the allegations against Junaid, which were identical as against the petitioner, have been found to be, after investigation, not correct, leading to non-submission of challan against him, coupled with the fact that there being no external injury in the Medico Legal Report nor is the FSL report supporting the case of the prosecution, with the petitioner being in custody for about one year and two months and the trial is not likely to conclude in near future as 19 prosecution witnesses are yet to be examined, the continuation of the petitioner in custody, therefore, would not be called for at this stage.

In view of the above, this criminal miscellaneous petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

Any observation made herein-above shall have no bearing on the merits of the case during the trial in any manner.

(AUGUSTINE GEORGE MASIH)
JUDGE

08.02.2021
Harish

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