

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

CRM-M-29021 of 2020

DATE OF DECISION :- January 19, 2021

Kapil @ Sushil

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Ishan Khetarpal, Advocate for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

The case has been taken up through Video Conferencing.

This second petition for regular bail has been filed by petitioner Kapil @ Sushil, an accused in F.I.R. No. 0 dated 5.9.2019 registered with Women Police Station, Kaithal for offences under Sections 328/344/376/383/506 IPC which was later on registered as F.I.R No. 436 dated 8.9.2019 for offences under Sections 328/342/376/506 IPC registered with Police Station Safidon, District Jind.

Briefly stated the prosecution story is that prosecutrix (name withheld) had submitted a written complaint addressed to Superintendent of Police, Kaithal inter alia stating that she is a married woman having a daughter and accused Kapil son of Randhir, resident of village Narwal, District Kaithal, who had been residing in her neighbourhood by threatening her physically exploited her due to which she had gone to her parental home and stayed there for one month. The accused came there and told her that her husband had met with an accident and was admitted in a hospital at Katihal and she should accompany him. As such accused took her along with him on motor cycle. At

that time Rs.50,000/- were there with the prosecutrix which she had taken for treatment of her husband. On the way accused snatched away Rs.50,000/- from her and then took her to a village leaving her with a boy Sudhir. He came there on the next day and raped her. According to the complainant prosecutrix she was detained at that place for three months. During that period petitioner had sexual intercourse with her several times after giving her intoxicants and ultimately Sudhir left her at village Narwal, She informed her family members and Panchayats were convened. Her family members disowned her. She started living in a rented house at Safidon The accused contacted her again and asked her to have physical relations with him which she refused. Then accused threatened to kill her.

On basis of such complaint, formal F.I.R. was registered. Accused-petitioner was arrested in this case on 13.9.2019. On completion of investigation and other formalities, challan against the accused had been filed in the Court. Statement of the prosecutrix has been recorded there. The petitioner had approached the Court of Sessions for grant of regular bail but was unsuccessful. He has come to this Court earlier craving for grant of similar relief by way of filing CRM-M-54460 of 2019 (O&M), however, the petition was withdrawn on 1.6.2020. Now the petitioner has approached this Court seeking regular bail, notice of which has been given to the State.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioner has contended that during her statement recorded in the trial Court the prosecutrix has not supported the prosecution story and has rather stated that in the year 2019 accused Kapil had taken her from her parental home at village Adiyana after saying to her that he would keep her with him; that he had taken her on a bike and then leaving her

in a park at Safidon had ran away. She categorically stated that accused had not done anything wrong with her. A copy of her such statement had been placed on record as Annexure P-2. A perusal of such statement goes to show that prosecutrix has not said anything incriminating against the petitioner and from her statement it cannot be made out that she was kidnapped or raped by the petitioner. Keeping in view the facts and circumstances of the case she was a star witness of the prosecution. She has not supported the case of the prosecution. That creates a serious dent in the case of the prosecution. Nevertheless it is function of the trial Court to take final decision in the matter on appreciation of evidence recorded during the trial.

Under the circumstances, the petition deserves to be accepted and it is hereby allowed. Petitioner Kapil @ Sushil is ordered to be released on bail on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court/CJM/Duty Magistrate, Jind subject to the following conditions :-

- (i) he shall appear in the Court on each and every date of hearing.
- (ii) he shall not give any threat or intimidation to the prosecution witnesses.
- (iii) he shall not leave India without prior permission of the Court and shall surrender his Passport, if he has got one, otherwise to furnish affidavit in that regard.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

(H.S. MADAAN)
JUDGE

January 19, 2021

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No