

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

CRM-M-36358-2020(O&M)

Date of decision : 25.03.2021

Shubham

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sanchit Punia, Advocate for the petitioner.

Mr. Gaurav Gulzar Singh Chauhan, AAG, Haryana.

ALKA SARIN, J. (ORAL)

Taken up through physical hearing.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.57 dated 14.11.2019 under Sections 376DA, 365, 328, 354A(1)(i), 506, 120-B of the Indian Penal Code, 1860 (IPC); Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012, registered at Women Police Station, Hisar.

The allegations in the FIR are that the petitioner and Amit made a phone call from phone No.97281-50650 on mobile number of the Prosecutrix and called her outside the house where they made her eat some intoxicant substances and after consuming which she became unconscious. They took her in the village fields in an unconscious state and there they raped her forcibly. It is further the allegation that they threatened her that

intoxicant substances forcibly.

Learned counsel for the petitioner would contend that the phone number mentioned in the FIR does not belong to the petitioner herein. Further in the statement recorded under Section 164 CrPC it has been stated by the Prosecutrix that on 25.10.2019 the petitioner made a phone call to her and she went to the fields to meet him and there Amit was also present and the petitioner handed over some intoxicating tablets to her and asked her to give these to her family members. She mixed those intoxicating tablets in the meals and gave the same to her family members and the petitioner raped the Prosecutrix and Amit, the co-accused, was standing away from the site. He would further contend that the statement of the Prosecutrix was recorded on 03.02.2021 wherein she has stated that on 25.10.2019 accused Amit and the petitioner telephonically called her downstairs and she came out and both of them administered some intoxicant substance to her and made her sit on a motorcycle and took her to the fields where the petitioner raped her and the co-accused Amit kept vigil. The learned counsel would contend that there are material discrepancies in the statements of the Prosecutrix which would show that the petitioner has falsely been implicated.

Learned counsel for the petitioner would further contend that neither the MLR nor the FSL Report support the prosecution version. He would further contend that all material witnesses stand examined in the case and the petitioner has been in custody since 28.11.2019 and he is a young boy of 21 years of age. Learned counsel for the petitioner has pointed out that the co-accused Amit has since been granted bail by this Court vide order dated 22.05.2020 in CRM-M No.1398 of 2020.

Learned counsel for the State has filed a reply by way of affidavit of Bharti Dabas, HPS, Deputy Superintendent of Police, CAW, Hisar. Along with the reply, FSL Reports as well as medical opinion have been appended. He, on instructions, is not in a position to deny the fact that all the material witnesses stand examined and that the petitioner, who is aged 21 years, has been in custody since 28.11.2019. He is also not in a position to deny the fact that the co-accused Amit has already been granted bail by this Court vide order dated 22.05.2020 in CRM-M No.1398 of 2020.

Without commenting upon the merits of the case and keeping in view the age of the petitioner and his period of custody and the fact that the co-accused, Amit, has already been granted bail by this Court vide order dated 22.05.2020 in CRM-M No.1398 of 2020 and that trial is likely to take some time to conclude especially in view of the prevailing conditions on account of COVID-19 Pandemic, I deem this to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

(ALKA SARIN)
JUDGE

25.03.2021
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO