

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-39609-2020 (O&M)

Date of Decision:- 23.2.2021

Sahib Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Karanvir Singh Khehar, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana,
assisted by Inspector Wahida Hameed.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

CRM-5254-2021

In view of the reasons mentioned in the application, the same is allowed as prayed for and Annexures P-10 and P-11 are taken on record subject to all just exceptions.

CRM-M-39609-2020 (O&M)

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.41, dated 21.7.2018, under Sections 328, 342, 506, 376-D, 120-B,

370 IPC and Sections 3, 4, 5, 5A, 5B, 5C, 6, 7, 9 of Immoral Traffic (Prevention) Act, 1956 at Police Station Women, District Panchkula.

2. The FIR in question was lodged at the instance of the victim wherein it is alleged that the husband of the victim is a labourer and that on 15.7.2018 Sunny (Sunil Kumar), who knew the victim's husband told her husband that he would provide some work to the victim at his farm house and that the victim would be required to do cleaning and kitchen work at the farm house and he would pay an amount of ₹12,000/- per month. It is alleged that Sunny also assured that he would also arrange for a job for victim's husband. The victim alleged that she went to the farm house of Sunny where she was administered some drug and was raped while in a state of unconsciousness. When the victim regained consciousness, she asked the accused to call her husband but they did not call her husband and also snatched her mobile phone. It is further alleged that aforesaid Sunny used to bring 10-12 persons every day who were known to him and they used to commit rape upon her and she was kept in a locked room. It is alleged that on 18.7.2018, nine persons committed rape upon her out of which two were police officials and that she could identify all of them. The complainant alleged that she somehow managed to escape from the farm house and went to Panchkula and narrated the entire incident to the police.
3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that he was an employee of Sunny and was working as Driver of his car. Learned counsel further

submits that even the medical evidence does not support the allegations as levelled by the prosecutrix inasmuch as the prosecutrix was not found to be sustaining any physical injury and was not even found to be under influence of any kind of drug. It has been submitted that in case the prosecutrix had been raped by as many as 40 persons as alleged by her, then certainly she would have sustained injuries either on her private parts or at least on her back in the nature of some abrasions or scratches but the injuries are conspicuously missing. It has further been submitted that it is highly unlikely that the petitioner would have associated with the main accused Sunny for commission of the offence as alleged. It has been submitted that the petitioner was never named in the FIR and was not even named when the statement of the prosecutrix was recorded in terms of Section 164 Cr.P.C. and it is only subsequently during the course of investigation that his name is stated to have surfaced.

4. Opposing the petition, the learned State counsel has submitted that since the prosecutrix has categorically named the petitioner and identified him also when she stepped into the witness box, the complicity of the petitioner in the entire occurrence is clearly evident. Learned State counsel has further submitted that the absence of injuries can be well explained from the fact that the prosecutrix had been drugged before commission of rape and on account of which she could not possibly have offered any resistance and it is on account of the said fact that no injury was found on her person. Learned State counsel has further submitted that since the presence of

the petitioner is also depicted in CCTV footage of the premises in question, the allegations against the petitioner virtually stand substantiated. Learned State counsel has however, submitted that the petitioner as on date has been behind bars since the last about 2 year and 7 months and that as on date 6 out of cited 56 PWs has been examined. It has further been submitted that the petitioner is not involved in any other case.

5. I have considered rival submissions addressed before this Court.
6. It is a case where the name of the petitioner is stated to have surfaced during investigation of the case being driver of the main accused Sunny. The complainant has named the petitioner to be amongst those who had committed rape upon her. However, the fact that the petitioner was employed as a driver with the main accused Sunny who was running a guest house, is a fact which needs to be considered as it is rather unusual that a master and his driver together would commit rape upon the victim. As far as the contention of the State counsel that the petitioner is seen in the CCTV footage, the said fact cannot be of much assistance to the prosecution inasmuch as the petitioner himself admits that he is driver of the main accused and as such his presence at the premises would be quite natural. In any case since the petitioner has been behind bars for a substantial period of 2 years and 7 months and the trial in its normal course is not likely to be concluded in immediate future as only 6 out of the cited 56 PWs has been examined, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the

petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

7. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

February 23, 2021
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No