

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40308-2020
Date of Decision: 11.01.2021

Ravi and anotherPetitioners

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Aditya Sanghi, Advocate,
for the petitioners.

Mr. Naveen Kumar Sheoran, DAG, Haryana,
for the respondent.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed by the petitioners, namely, Ravi and Ravinder, under Section 439 of the Code of Criminal Procedure, for seeking grant of regular bail to them in FIR No.43 dated 13.05.2020, under Sections 376(2)(n) and 376-D of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered at Police Station Women Police Station Sirsa, District Sirsa.

As per the allegations contained in the FIR, which was registered on the basis of statement of the prosecutrix that she is 18½ years of age and petitioner No.1-Ravi and petitioner No.2-Ravinder had started talking with her on mobile phone and they talked with each other for about one month and on 12.04.2020, in the mid night at about 12:00 to 12:30 AM, Ravinder called her in the school near her house and asked her to give

sleeping medicines to her parents and thereafter, petitioner No.2-Ravinder did wrong thing with her but she did not give sleeping medicines to her parents. After about eight days, i.e., on 20.04.2020 at about 11:00 PM, phone call of petitioner No.1-Ravi came and said that he wants to do the same thing with her also and thereafter, Ravi also did the wrong thing with her and thereafter, they started threatening to her.

The learned counsel for the petitioners has further submitted that on the bare reading of the FIR itself and on the face of it, it can be seen that at the most the present case was the case of the consensual sex with the prosecutrix and there is no allegation on the face of it that the said action if any was done by way of a force and therefore, the basic ingredient of Section 376 IPC is not attracted. He has further submitted that the prosecutrix was admittedly 18½ years and therefore, the offence under Section 376 IPC is not committed. The learned counsel for the petitioner has further submitted that even the perusal of the statement made by the prosecutrix under Section 164 Cr.P.C., vide Annexure P-5, it can be seen that no force at all was alleged by the prosecutrix in her statement. However, the allegation of blackmailing was there but the same would not attract the provisions under Section 376 IPC. He has further submitted that even in the medical examination which was conducted upon the prosecutrix, the semen was never sent for matching and therefore, he has prayed for the grant of regular bail to the petitioners. He has further submitted that in fact it was a case where the petitioners were falsely implicated in view of the fact that one Sachin was beaten by the father and uncle of the prosecutrix and the petitioners were witnesses to the evidence and in order to make the parties

enter into a compromise that the aforesaid FIR was lodged against the petitioners. The learned counsel further submitted that the fact that the FIR is false and fabricated is also clear from the fact that even the sister of the prosecutrix had lodged a similar kind of FIR on the same day, i.e., on 16.05.2020, vide Annexure P-7, against two other co-villagers, who have since been granted bail by the learned Courts. He has further submitted that it is totally improbable that two sisters had lodged a similar kind of FIR on the same day by involving co-villagers and it was only because of grudge between the father of the prosecutrix and these four persons that the present FIR was lodged. He has further submitted that the petitioners are in custody since 16.05.2020 and the investigation of the present case is already complete and no recovery is to be made and the case is now fixed for framing of the charges and has, therefore, prayed for the grant of regular bail.

On the other hand, the learned State counsel has submitted that although the investigation of the present case is complete and the petitioners are in custody since 13.05.2020 but considering the seriousness of the present case, the petitioners may not be enlarged on bail. He has further submitted that in case, the petitioners are released on bail then there is possibility that they may influence the witnesses.

I have heard the learned counsel for the parties.

So far as the custody of the petitioners is concerned, it is not in dispute and it is also not in dispute that the petitioners are not involved in any other case. The investigation of the present case is already complete and no recovery is to be made in the present case. The averments made by the

learned counsel for the petitioners that apparently the FIR as well as the statement recorded under Section 164 Cr.P.C. would suggest that at the most, it would be a case of consent and there is no element of force, which has been alleged either in the FIR or in the statement recorded under Section 164 Cr.P.C. and therefore, does carry some weight. So far as the arguments raised by the learned State counsel that at the time of trial, the petitioners may influence the witnesses would not carry weight at this stage because the aforesaid argument is not based on any material and seems to be a mechanical argument, which has been advanced by the learned State counsel.

Therefore, considering the totality of the facts and circumstances of the present case, I deem it fit and proper to admit the petitioners on bail. Consequently, the present petition is allowed. The petitioners shall be admitted to regular bail on their furnishing bail/surety bonds subject to the satisfaction of the learned trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

11.01.2021
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No