

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

CRM-M No.811 of 2022 (O&M)

Date of Decision.31.08.2022

Dharmender @ Kalu

...Petitioner

Vs

State of Haryana

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Nihul Pratap Singh, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

This is second bail application that has been filed seeking grant of regular bail to the petitioner, who is in custody in FIR No.762 dated 23.11.2019 under Sections 323, 376-D, 452, 506 IPC (Sections 109, 201, 342, 120-B IPC added later on) registered at Police Station Surajkund, District Faridabad.

Learned counsel appearing on behalf of the petitioner would contend that a false case has been registered against the petitioner and in fact, the allegations as set out in the FIR qua petitioner are limited to the extent that he instigated Mausam and Aryan to beat the complainant/prosecutrix and commit rape upon her. It is argued that main allegations are against Mausam and Aryan, who are in custody as well. It is further argued that statement of the complainant/prosecutrix does not inspire confidence to the effect that the petitioner herein has been instrumental or had raped the complainant/prosecutrix and therefore, once statement of the complainant/prosecutrix has been recorded, he ought to be released on regular bail.

Per contra, learned counsel appearing on behalf of the respondent-State opposes the said prayer by contending that the petitioner herein is the main instigator on whose instructions, both Aryan and Mausam committed offence of gang rape. She would argue that there is medical evidence available on record to substantiate the claim of the prosecutrix. She would rely upon the reply as filed by way of affidavit wherein it has categorically been submitted that the co-accused Mausam and Aryan, while committing rape upon the prosecutrix had captured the occurrence in their cell phone by making video, which was deleted thereafter. During the occurrence, both the said accused namely Mausam and Aryan had conversation with petitioner on his mobile phone. It is submitted that mobile phones of co-accused have been sent to DITAC for recovery of data. It is also submitted that another FIR No.206/2019 under Sections 323, 354-B, 452, 506, 509, 34 IPC and Section 12 of POCSO Act stood registered against the petitioner at Police Station Pul Prahlad Pur, Delhi, which is pending for framing of charges.

I have heard learned counsel for the parties and have perused the paper book and find that there is no ground made out for interference in the second bail application. The argument as raised by counsel for the petitioner that the petitioner is not actively involved in commission of offence and that there are discrepancies in the statement given by the prosecutrix before the trial court and in her statement under Section 164 Cr.P.C., would be appreciated by the trial court in its entirety. There is categorical stand taken by the counsel appearing for the respondent that petitioner was the master-mind behind the occurrence and had instigated both Mausam and Aryan to commit the offence of rape upon the prosecutrix.

in her own house. There is also an averment that while offence was committed, there was a video made, which was subsequently deleted, however, petitioner was in contact with both the offenders at the relevant time. Therefore, this Court *prima facie* is of the opinion that at the moment, there is no ground made out for grant of regular bail. Consequently, the instant second bail application stands dismissed. However, the trial court is directed to conclude the trial as expeditiously as possible.

(JAISHREE THAKUR)
JUDGE

August 31, 2022

Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No