

CRM-M-24256-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-24256-2022

Decided on :27.06.2022

Kamaldeen

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Mrigank Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Diwan S. Adlakha, Advocate
for the complainant.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 366 dated 16.09.2021 under Sections 323, 354, 376, 506 and 511 of the Indian Penal Code, 1860 registered at Police Station Chandimandir, District Panchkula.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 07.03.2022 and challan in the present case has already been presented and there are 15 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. The petitioner is not involved in any other case. It is further submitted that the version which has been given in the FIR, has not been fully believed by the investigating team

inasmuch as, the 4 other persons specifically mentioned in the FIR have been found to be innocent and no challan has been presented against them. It is contended that in the FIR, a specific allegation had been made by the complainant to the effect that the brother of the complainant namely Taleem had called the number 112 and thereafter, police officials arrived and rescued the complainant and her brother, whereas, as per report under Section 173 Cr.P.C., it has been specifically mentioned that as per the report which was summoned from the police control room alongwith Police Chowky, Ramgarh, no record of any call being made either to the police control room or 112 or Police Chowky, Ramgarh was found and moreso, no police party had gone to the village Tibbi. Learned counsel for the petitioner has further referred to the video footage of the date of the incident which was also taken into custody and as per the said footage, the complainant can be seen going with her brother in a good condition. It is further submitted that even from the medical evidence it cannot be inferred that any attempt to rape was made. It is further submitted that the present FIR has been registered after a delay of one and a half month from the date of the alleged incident.

Learned State counsel as well as learned counsel for the complainant, on the other hand, have opposed the present petition for regular bail and have submitted that as per the allegations in the FIR, it is the present petitioner who had attempted to commit rape upon the complainant on 29.07.2021 and have further submitted that till date, the

complainant has not been examined and thus, the petitioner does not deserves the concession of regular bail.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 07.03.2022 and is not involved in any other case. Challan in the present case has already been presented and there are 15 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. There is a delay of one and a half month in the registration of the FIR from the date of the alleged incident and a part of the version as has been given in the FIR moreso, with respect to calling the number 112 and in pursuance of the same, the police officials coming to rescue the complainant and her brother has not been found to be true as per the report submitted under Section 173 Cr.P.C. Even the other co-accused against whom allegations have been made in the FIR have not been challaned. The question whether the alleged incident dated 29.07.2021 took place or not, would be a moot question, which would be finally adjudicated during the course of trial.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner.

(VIKAS BAHL)
JUDGE

June 27th, 2022
Mehak

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