

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(206)

CRM-M-27129-2022

Date of decision: - 27.06.2022

Pawan Kumar

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Surinder Singh Duhan, Advocate,
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.840 dated 18.10.2021, registered under Sections 376(3), 363, 366A, 506 and 328 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Barwala, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 20.12.2021 and the investigation is complete and the challan has already been presented and there are 21 prosecution witnesses, none of whom have been examined. It is further submitted that the petitioner is not involved in any other case. It is also submitted that

the petitioner has not named in the FIR and as per the statement of the prosecutrix recorded under Section 164 Cr.P.C. on 20.10.2021 (Annexure P-2), she had admitted that she had friendly relations with one Vinod since February, 2021 and she had gone along with the said Vinod to roam around and on reaching Agroha, said Vinod had booked a room in a hotel and ordered burgers and cold drinks and after consuming the same, the prosecutrix became unconscious and did not remember anything. It is submitted that in fact as per the said statement of the prosecutrix recorded under Section 164 Cr.P.C., it is the brother-in-law of the prosecutrix, who had helped her and subsequently, the prosecutrix is seeking to implicate the said brother-in-law for the offence of rape along with the present petitioner, who is stated to have been a friend of the said brother-in-law. It is further submitted that the said prosecution version as has been recorded in paragraph 5 of the impugned order, rejecting the bail to the petitioner, is contrary to the version given by the prosecutrix in her statement recorded under Section 164 Cr.P.C.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that although, the petitioner was not named in the FIR and even in statement recorded under Section 164 Cr.P.C. there is no allegation against the present petitioner, but during investigation, it has been found that the prosecutrix was firstly raped by one Vinod and thereafter, by the brother-in-law of the prosecutrix, namely, Satpal and then, by the present petitioner. However, the other factual aspects have not been disputed by learned State counsel.

This Court has heard learned counsel for the parties and has

perused the paper book.

The petitioner has been in custody since 20.12.2021 and the investigation is complete in the present case and the challan has been presented and there are 21 prosecution witnesses, none of whom have been examined. The petitioner was not named in the FIR and there is no allegation levelled against him in the statement recorded under Section 164 Cr.P.C. by the prosecutrix on 20.12.2021 (Annexure P-2). In the said statement, the prosecutrix had in fact stated that she knew co-accused Vinod and she had gone with him to roam around and it is the said Vinod who had booked a room in a hotel and ordered the alleged intoxicating burgers and cold drinks. As per the statement of the prosecutrix recorded under Section 164 Cr.P.C., it was the brother-in-law of the prosecutrix, who had helped her after the ordeal. There is no allegation against the present petitioner as per the said statement under Section 164 Cr.P.C., much less with respect to rape.

Keeping in view the abovesaid 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.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant, prosecutrix or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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.

June 27, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes