

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

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**CRM-M No. 51552 of 2022
Date of Decision : 10.3.2023**

Juned

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Jitender Dhanda, Advocate, for the petitioner
Ms. Ankita Ahuja, AAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

This is a petition under Section 439 Cr.P.C. seeking regular bail to the petitioner in case FIR No.96 dated 14.4.2022 under Sections 366, 328, 376-D and 506 IPC and Section 6 of POCSO Act, 2012, registered at Police Station Pinangwan, District Nuh.

The FIR was lodged on the statement of the victim's father alleging that one person namely Juned, whose parentage was not known, along with four other unknown residents of Bhadas, Nagina, had committed rape upon his daughter, aged about fifteen years. She was found missing from home on 13.4.2022. Around 2:00 p.m. he found her daughter in unconscious condition at the bank of a canal. She was brought home and became unconscious. She named one Juned and four other persons, who raped her by administering some intoxicant at a deserted place, stating that she would identify them on seeing.

Learned counsel for the petitioner contends that it is a case of mis-identification by the Investigating agency, and the petitioner, Juned son of Kundan, has been wrongly implicated in the case. The prosecutrix never named him, nor has he anything to do with the case. He has referred to statement of the victim recorded under Section 164 Cr.P.C. dated 15.4.2022 (Annexure P-1), where she has named two other boys, namely, Jafar and Juned. Subsequently, in her testimony before the Court as PW-1 (Annexure P-2), the victim again reiterated that two other persons, namely, Juned son of Ishab and Jafar son of Maksood, gagged her mouth, took her on motor cycle to some unknown place

and raped her. She identified the accused person present in Court as Jafar son of Maksood, who had raped her along with co-accused Juned, who was yet to be arrested. She also stated that she did not know other two persons present in Court (which included the petitioner) and they did nothing wrong with her at any point of time. On exactly similar lines are testimonies of the victim's father/complainant as PW-2 and her mother as PW-3, which have also been placed on record as Annexures P-3 and P-4 respectively. On this basis, learned counsel has contended that there is no evidence on record to connect the petitioner with the alleged offences.

Learned State counsel, on instructions from ASI Sudhir, submits that DNA report in the case is still awaited. Besides, trial of the case is going on and nine prosecution witnesses out of seventeen have already been examined. It is not denied that there is no other case against the petitioner, who is in custody since 16.4.2022.

Keeping in view the submissions made by learned counsel for the petitioner as well as testimonies of the prosecution witnesses, it appears to be a case of mis-identification. Besides, the material prosecution witnesses already stand examined and trial will take some time to conclude. No useful purpose will be served by confining the petitioner to custody during trial, any further.

Accordingly, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate.

Nothing observed hereinabove will be construed as an expression of opinion on merits of the case.

(TRIBHUVAN DAHIYA)
JUDGE

10.3.2023
Ashwani

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