

(2017) 04 RAJ CK 0088
In the Rajasthan High Court
Case No : 3102 of 2017

Hukam Singh S/o Sh. Prithvi Singh

APPELLANT

Vs

State of Rajasthan Through Public Prosecutor

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 439, Section 161 - Special powers of High Court or Court of Session regarding bail - Examination of witnesses by police
Indian Pen

Citation : (2017) 04 RAJ CK 0088

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Pradeep Shah, A.S. Rathore, Sravan Saini

Judgement

1. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the case diary.
2. The instant bail application under Section 439 Cr.P.C. has been preferred on behalf of the petitioner who is in custody in connection with F.I.R. No.3/2017, registered at Police Station Karda, District Jalore for the offences under Sections 363, 366A and 376 IPC and Section 3/4 of the POCSO Act.
3. A typed report of the alleged rape committed upon the prosecutrix Mst. R was lodged by her father at the Police Station Karda on 3.1.2017. In the said report, the date of birth of the victim was mentioned as 11.3.1999 and a transfer certificate to this effect was annexed with the report. It is alleged in the report

that the victim went missing on 21.12.2016 and she returned back on 21.12.2016. On making enquiries, she disclosed that she had gone to ease herself when three persons came around in a black coloured car with their faces covered. They forcibly kidnapped and took her away in the car. She was taken to a hilly area near Raniwara. She could identify two persons namely, Vijay and Praveen whereas third person was not known to her. Vijay and Praveen subjected her to forcible sexual assault and threatened her not to disclose the incident to anybody. It was also mentioned in the report that an unknown person having mobile no. 9001510991 was making calls on the mobile no. 9783963201 held by the complainant. On the basis of this report, FIR No.3/2017 was registered at the Police Station Karda for the offences under Sections 363, 366A and 376(c) IPC and Section 3/4 of the POCSO Act and investigation commenced. Though the FIR was lodged after a delay of nearly 14 days and that too on the basis of the information supplied by the victim, the petitioner was not named therein. However, when the victim herself was examined under Section 161 Cr.P.C. on 5.1.2017, she alleged that the third person who was accompanying Vijay and Praveen was the present petitioner who has newspaper business at Bhinmal. She alleged that all three subjected her to forcible sexual assault. The first informant was examined under Section 161 Cr.P.C. on 5.1.2017 and in such statement, he alleged that his daughter disclosed the entire sequence of events to him whereafter he accompanied with his daughter, the prosecutrix went to the Bhinmal Court, got the report typed and lodged the FIR at Police Station Karda.

4. During course of investigation, various call detail records were collected and the I.O. after finding the named accused Vijay and Praveen innocent has exonerated them. The date of birth of

the victim as mentioned in the FIR was found incorrect upon verification and thereafter, the offences under the POCSO have been deleted from the charges. The petitioner now remains the sole accused in the case as per the investigating agency. He has been arrested and remanded to judicial custody. Hence, the instant bail application has been preferred on his behalf.

5. Shri Shah learned counsel for the petitioner vehemently urged that that petitioner has been falsely implicated in the case. The entire case as set out in the FIR stands falsified after exclusion of Vijay and Praveen from the array of the accused. The petitioner was admittedly known to the victim from before but she did not divulge his name when the FIR was typed out and lodged at the Police Station Karda after nearly 14 days of the incident. He has placed on record, certain print outs of the whatsapp messages exchanged from the mobile numbers held by the victim's father and the petitioner and urges that from these messages, it is apparent that as a matter of fact, the victim was pressurizing the petitioner to establish relations with her but the petitioner was not relenting. He thus prays that the petitioner should be enlarged on bail.

6. Learned Public Prosecutor as well as the learned counsel for the complainant vehemently oppose the submissions advanced by the petitioner's counsel. However, the learned Public Prosecutor with reference to the factual report of the I.O., which is taken on record, candidly concedes that the prosecution case as regards the date of birth of the victim mentioned in the FIR has been found to be false and instead her actual date of birth is recorded in the school documents as 26.12.1996.

7. Two accused named in the FIR namely, Vijay and Praveen have been found innocent. The petitioner was admittedly known to

the prosecutrix from before. In this background, omission of his name in the FIR gains significance and goes to the root of the matter. Be that as it may. Any opinion on the veracity of the prosecution story may prejudice investigation and trial, but having regard to the facts and circumstances noticed above, this Court is of the opinion that the petitioner deserves to be released on bail.

8. Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is directed that the petitioner Hukam Singh arrested in connection with the F.I.R. No.3/2017, registered at Police Station Karda, District Jalore shall be released on bail provided he furnishes a personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.