
(2017) 03 RAJ CK 0017
In the Rajasthan High Court
Case No : 1937 of 2017

Suganlal @ Sanju S/o Shri Sawaroopram	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#), [Section 161](#), [Section 164](#) - Special powers of High Court or Court of Session regarding bail - Examination of witnesses by pol

Citation : (2017) 03 RAJ CK 0017

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Narendra Rajpurohit, K @APPELLANT @hash Vyas

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material available on record.
2. The present bail application has been filed under Section 439 Cr.P.C. on behalf of the petitioner, who is in custody in connection with F.I.R. No.63/2016, Police Station Siriyari, District Pali for the offences under Sections 363, 366 & 376(2)(1) IPC and Section ? of the POCSO Act.
3. Counsel for the petitioner contends that the victim Mst.S was having long standing love affairs with the present petitioner even though she was married to Shrawan Nath. She voluntarily eloped with the petitioner in December, 2015. Her mother Smt.Tulsi

lodged a missing person's report at P.S. Siriyari on 7.1.2016. In connection with the enquiry of the said missing person's report, the petitioner and the victim were discovered by the police officers of P.S. Sojat Road on 1.2.2016 and on enquiry being made, the victim clearly stated that she had gone to Mumbai with her friend Sukanlal voluntarily. During the course of said enquiry, the victim disclosed her age to be 18 years and did not level any allegation of sexual assault. After more than 18 days thereafter, the mother of the victim filed a complaint in the Court of Judicial Magistrate, Marwar Junction against four persons including the present petitioner for the allegations involving offences under Sections 366, 120B and 376(g) IPC. The said complaint was forwarded to the police for investigation where FIR No.63/2016 was lodged for the offences under Sections 366 and 376 IPC and Section 3/4 of the POCSO Act. The victim was examined under Sections 161 and 164 Cr.P.C. and in such statements, she attributed the allegations of rape to Naresh Nath, the present petitioner and one Shiv Nath in that sequence. However, the I.O. did not find the case proved against the other two accused and has charge-sheeted the petitioner alone. The bail application filed on behalf of the petitioner was rejected by the learned trial judge by order dated 4.1.2017. Hence, the instant bail application.

4. Learned counsel for the petitioner urges that the entire prosecution is false and fabricated. In the proceedings of missing person's report, the victim and her mother gave out her age to be 18 years. The victim stated of voluntary and consensual relations with the petitioner. FIR was filed after significant delay for oblique motives. Other two co-accused namely, Naresh and Shivilal against whom allegations of sexual assault were made by the victim have not been charge-sheeted by the police. He thus urges that the

petitioner deserves to be released on bail.

5. Learned P.P. though vehemently opposes the arguments advanced by the petitioner's counsel but he too is not in a position to dispute the fact that the story as disclosed during the proceedings of the missing person's report totally demolishes the subsequent case as set up in the belated FIR.

6. Be that as it may. Any comment on the merits of the case can prejudice the trial but having regard to the entirety of the facts and circumstances as available on record and upon a consideration of the arguments advanced at the Bar, this Court is of the opinion that the bail application filed by the petitioner deserves to be accepted.

7. Consequently, the bail application is allowed. It is ordered that the accused-petitioner, Suganlal @ Sanju arrested in connection with F.I.R. No.63/2016, Police Station Siriyari, District Pali 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.