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**(2013) 10 P&H CK 0164**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. M-18246 of 2013

Sunil

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 25-10-2013

**Acts Referred:**

**Citation :** (2013) 10 P&H CK 0164

**Hon'ble Judges :** Naresh Kumar Sanghi, J

**Bench :** Single Bench

**Advocate :** Pawan Kumar and Mr. Shalender Mohan in CRM-M-18246 of 2013, Mr. Mohit Garg in CRM-M-18480 of 2013 and Mr. H.N. Sahu in CRM-M-19211 of 2013, for the Appellant; Chetan Sharma, AAG., for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Naresh Kumar Sanghi, J.—Vide the present order, all the three Criminal Misc. petitions captioned above are being disposed of since the same are arising out of one and the same FIR and the common prayer for grant of regular bail to the petitioners has been made. Prayer in these petitions are for grant of regular bail to petitioners, Sunil, Kuldeep @ Musha, Dharmender @ Mahender and Anil @ Lila who have been booked for having committed the offences punishable under Sections 306 read with Section 34, IPC and Section 3(I)(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for brevity "the Act") in a case arising out of FIR No. 752, dated 19.09.2012, registered at Police Station, Sadar, Hisar.

2. Learned Senior counsel contends that according to the allegations, gang rape was committed on the daughter of the complainant on 09.09.2012. The complainant and her husband, Krishan Kumar (deceased), acquired the knowledge with regard to the commission of gang rape on 18.09.2012 and thereafter, Krishan Kumar (deceased) and victim were going to the police station to lodge the report and in the way, the petitioners and their co-accused obstructed Krishan Kumar and the victim from proceeding to the police station

due to which, Krishan Kumar committed suicide. A separate case for the offence punishable u/s 376(2)(g), IPC, was registered vide FIR No. 753 dated 19.09.2012 at Police Station, Sadar, Hisar. He further submits that the petitioners and their co-accused were tried for the commission of gang rape. The victim and her mother appeared as witnesses but the petitioners were not named as an accused in the said case and hence, the learned trial court vide judgment dated 03.05.2013 (Annexure P-2) acquitted the petitioners. The petitioners were also put to trial for the offence punishable u/s 306 read with Section 34, IPC and Section 3 of the Act and in spite of the several adjournments and in spite of issuance of bailable warrants the complainant and her daughter (victim) have failed to appear before the learned trial court. Learned Senior counsel submits that it was held by the learned trial court that the petitioners had not committed the offence of gang rape, in that eventuality, there was no occasion for the petitioners to have stopped Krishan Kumar (husband of the complainant) to go to the police station for lodging the report with regard to commission of gang rape with his daughter and as such, the ingredients of Section 306, IPC and Section 3 of the Act are not attracted against the petitioners. The learned counsel representing the other petitioners have also adopted the arguments raised by the learned Senior counsel.

3. Learned counsel for the State, on instructions from Vinod Kumar, Deputy Superintendent of Police, Hisar, very fairly concedes that the petitioners were tried for the offence punishable u/s 376(2)(g), IPC but were acquitted by the learned trial court since the prosecutrix and her mother had not alleged anything against them (petitioners). He also concedes that in spite of the numerous opportunities granted by the learned trial court, the prosecutrix and her mother (complainant) have failed to appear before the learned trial court for making their statements.

4. I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

5. It is the conceded position that during the trial of the case u/s 376(2)(g), IPC, the prosecutrix and her mother had not alleged anything against the petitioners. Even they had not said anything with regard to the fact that Krishan Kumar (since deceased) was obstructed by the petitioners while he was proceeding towards the police station. In spite of the several opportunities granted by the learned trial court, the complainant and her daughter have failed to appear before the said court. The petitioners are behind the bars for the last more than one year and as such, their further incarceration is not justified. Accordingly, all the petitions are allowed. Petitioners Sunil, s/o Manak Chand, r/o village Mangali Aklan, District Hisar; Kuldeep @ Musha, s/o Narayan Chand, r/o village Dabra, Tehsil & District Hisar; Dharmender @ Mahender s/o Om Parkash and Anil @ Lila s/o Pratap, both residents of village Dabra, District Hisar, are ordered to be released on bail during the pendency of the trial of the present case subject to their furnishing bail bonds to the satisfaction of the learned Chief Judicial

Magistrate/Duty Magistrate, Hisar.

6. However it is made clear that in case the petitioners or their relatives put any kind of pressure on the complainant or her daughter for desisting them and asking them not to depose against them (petitioners), in that eventuality, the prosecution would be free to move an application for cancellation of their bail granted by this Court. A copy of this order be placed on the files of connected cases.