

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Criminal Miscellaneous 2nd Bail No. 84 / 2017

Kamalkant Sharma S/o Late Shri Kalu Ram Sharma B/c Hariyana Brahmin, Aged About 25 Years, R/o Village Bhilpura, Tehsil Amer Distt. Jaipur (at Present in Central Jail Jaipur)

-----Petitioner

Versus

State of Rajasthan Through PP

-----Respondent

For Petitioner(s) : Mr. Arvind Kumar Gupta

For Respondent(s) : Mr. Aladeen Khan

HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

/ Order

28/04/2017

This is second application preferred under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in a case arising out of First Information Report bearing No.724/2015 registered at Police Station Bassi District Jaipur for offences punishable under Sections 363, 366, 376 and 384 of Indian Penal Code.

Earlier bail application preferred by the petitioner, i.e. S.B. Criminal Miscellaneous Bail Application No.3864/2016 was dismissed as withdrawn from this Court with liberty to the petitioner to renew prayer for bail, after the statement of the prosecutrix (name withheld to protect her identity) is recorded by the trial Court.

The operative portion of the order dated 18.07.2016 reads as under :-

"The learned counsel appearing for the petitioner, after having argued the matter at some length, has prayed that he may be permitted to withdraw the present application with liberty to the petitioner to renew prayer for bail, after examination of the prosecutrix by the trial Court as a witness.

As prayed, present application is, hereby, dismissed as withdrawn with liberty aforesaid.

The trial Court is directed to examine the prosecutrix as first witness."

Mr. Arvind Kumar Gupta, learned counsel appearing for the petitioner, has submitted that now the prosecutrix has been examined by the Id. trial Court as P.W.1. Counsel has further submitted that the prosecutrix had filed a criminal complaint in the Court of Magistrate on 17.12.2015. Counsel has contended that in the complaint itself, it has been stated that the prosecutrix for the first time was raped two years before filing of the complaint.

Counsel appearing for the petitioner has drawn attention of this Court towards cross-examination of the prosecutrix, wherein it is admitted by the prosecutrix as under :-

"यह कहना सही है कि 12 जुलाई 2014 को मेरी माता, भाई व मैंने अधिवक्ता रामगोपालद्वारा नोटिस का जवाब दिलवाया था। प्रदर्श डी 3 वह नोटिस हो तो मुझे पता नहीं। प्रदर्श डी 3 12 जुलाई 2014 को नोटिस दिलवाया उसमें मेरी आयु 20 वर्ष मैंने नहीं लिखवायी थी। प्रदर्श डी 3 नोटिस का सी से डी भाग मैंने नहीं लिखवाया। प्रदर्श डी 3 के बारे में मुझे कुछ नहीं पता। प्रदर्श डी 3 नोटिस में मेरे पिता व भाई के एलआईसी के बॉण्ड में क्लेम दिलाने के बारे में नहीं लिखा है।"

In the context of above gain made by the defence in the cross-examination, Mr. Gupta, Id. counsel appearing for the petitioner, has submitted that the brother of the prosecutrix had issued a cheque in favour of the petitioner amounting to Rs.5,30,000/-. The said cheque on presentation had bounced. The petitioner had issued a notice through Counsel on 03.07.2014 to the brother of the prosecutrix.

Counsel appearing for the petitioner has drawn attention of this Court towards Annexure-4, which in cross-examination has been exhibited as Exhibit-D/3.

Counsel appearing for the petitioner has read Annexure-4/Exhibit-D/3, to contend that Advocate - Ramgopal Sharma had given a reply to the notice given by the counsel for the petitioner under Section 138 of the Negotiable Instruments Act.

Counsel appearing for the petitioner has referred to the opening line of Annexure-4/Exhibit-D/3, to contend that the said reply, to the notice under Section 138 of the Negotiable Instruments Act was given on behalf of the prosecutrix, her mother and brother. It is stated that the said reply was given on 12.07.2015 and in the said reply, thus, no whisper was made regarding the rape committed upon the prosecutrix two years before 17.12.2015.

It is further contended that complaint of alleged rape was made after two years.

At this juncture, this Court shall refrain to comment upon the merits of the case. However, this Court is of the considered opinion that in the present case, continuous detention of the petitioner, as an under trial is not warranted.

Consequently, the present application is **accepted** and the petitioner is ordered to be released on bail during the pendency of the trial, to the satisfaction of the trial Court.

(KANWALJIT SINGH AHLUWALIA)J.

ashok