

Sanjeev Kumar and another Vs State of Haryana and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 3, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 439
Penal Code, 1860 (IPC) â€” Section 34, 363

Citation: (2007) 1 RCR(Criminal) 157

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: V.S. Rathore, for the Appellant; M.S. Sindhu, DAG, Haryana For the Respondent No. 2 Mr. Mohnish Sharma, for the Respondent

Judgement

Satish Kumar Mittal, J.

Petitioners Sanjeev Kumar and Anil Kumar, both brothers, have filed this petition u/s 439 of the Code of Criminal

Procedure for the grant of regular bail, as they have been arrested in a complaint/protest petition filed by respondent No. 2.

2. I have heard counsel for the parties.

3. Counsel for the petitioners contends that for the alleged incident, which took place on the intervening night of 11/12.2.2005, FIR No. 10 dated

12.2.2005 was got registered by the complainant alleging therein that his daughter Sonia, who was a student of 10th class in Shivalik Public

School, Village Sabhapur, Tehsil Jagadhri, District Yamuna Nagar, was raped by the petitioners, when she was coming out of her house in the mid

night to answer the call of nature. She was taken to the room on the first floor where the petitioners committed rape after threatening her. A

thorough investigation was conducted in the said FIR by the Deputy Superintendent of Police, Jagadhri and thereafter, the cancellation report was

submitted to the court. Before the court, the complainant filed protest petition which was treated as a complaint, in which both the petitioners have

been summoned for the offences under Sections 363, 366, 376, 506 read with Section 34 IPC. After summoning, the petitioners filed anticipatory

bail, which was dismissed by the Sessions Court on 19.4.2006 and thereafter by this Court on 2.5.2006. However, the petitioners were granted

liberty to move application for regular bail before the Sessions Court. Thereafter, the petitioners surrendered on 5.9.2006 and moved application

for regular bail, which has been dismissed by Addl. Sessions Judge, Jagadhri on 11.9.2006. Hence, this petition.

4. Counsel for the petitioners contends that the petitioners have been falsely implicated in this case due to the old enmity between the parties. They

are neighbours in the village. While referring to the MLR, counsel contends that no injury was found on the person of the prosecutrix and as per

the FSL report, no semen could be detected on any of the exhibits i.e. Pyjama, pubic hair, vaginal swabs and slides. Counsel for the petitioners

refers to the cancellation report submitted by the police, in which it has been found that on the day of occurrence, prosecutrix was found standing

alone on the gate of Ply Factory in the area of Mali Majra and the Chowkidar gave a telephone call to the police. Thereupon, the police came and

took the girl to Police Station, from where the complainant, who is her father, took her. As per the aforesaid complaint, the prosecutrix went 160

yards away from the house to answer the call of nature. It has not been explained why she went outside her house. During the police investigation,

it was found that the allegation of forcibly abducting the prosecutrix by the accused in the mid night from her house which is situated in the middle

of the village was found to be false. Statements of various persons were recorded during the investigation and none of them supported version of

the complainant. Counsel for the petitioners further contends that there is an old rivalry between the complainant and family of the petitioners. He

contends that the complainant's real brother, namely Rajender Kumar, had contested the election for the post of Sarpanch against Krishan Lal,

real uncle of the petitioners, and lost the same. Counsel further contends that as a matter of fact, marriage of petitioner No. 1 was to be solemnized

on 6.3.2005 with the real cousin of the prosecutrix and with a view to obstruct the said marriage, a false complaint was filed by the complainant.

5. On the other hand, counsel for the complainant opposed the prayer of the petitioners for the grant of bail on the ground that the alleged offence

is serious. However, he could not explain the report of the Chowkidar made to the police and the fact as to why the prosecutrix went 160 yards

away from her house to answer the call of nature.

6. In view of the above, without expressing any opinion on the merits of the case, I deem it appropriate to grant regular bail to the petitioners and

they are, accordingly, ordered to be released on bail subject to their furnishing bail bonds to the satisfaction of the trial court.