



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

S.B. Criminal Miscellaneous 2nd Bail Application No. 5401/2020

Munfed S/o Shri Arsad, R/o Vill. Teuvas Police Station Kotkasim
District Alwar (Raj.)

(At present Accused in Judicial Custody at District Jail Alwar).

----Petitioner/Accused

Versus

State of Rajasthan through PP

----Non-petitioner



| | | |
|-------------------|---|--|
| For Petitioner(s) | : | Mr. Azad Ahmed |
| For Respondent(s) | : | Mr. Ramesh Choudhary, PP Mr. Kushal Singh, RPS, CO Tijara, Alwar - present in person |

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

30/07/2020

The petitioner has filed this second bail application under Section 439 Cr.P.C. in connection with FIR No.189/2019 registered at Police Station Khushkhera, District Alwar, for the offences under Sections 366 and 376 IPC.

The Court vide order dated 1.7.2020 observed as under:

“Learned counsel for the petitioner argued that statement of the prosecutrix recorded under Section 164 Cr.P.C. specifically made allegation against the present petitioner and other person Taufik. Learned counsel submitted that the Police had not conducted the investigation in proper manner and only present accused petitioner has been made an accused.

Learned Public Prosecutor has produced the factual report for perusal of this Court and submitted that no case has been made out as per Police investigation against Taufik.



This Court before proceeding further in the matter, deems it proper to direct the learned Public Prosecutor to call the I.O. who had conducted the investigation and in what manner the investigation has been done and the other accused person named in the FIR viz., Taufik has been left out in the investigation by not filing charge sheet against him.

Learned counsel for the petitioner is free to file relevant papers/challan papers.

List this case on 07.07.2020. The Investigating Officer shall remain present in the Court on the said date.”

Again on 21.7.2020, the Court observed as under:

Vide order dated 01.07.2020 the Co-ordinate Bench of this Court directed the learned Public Prosecutor to call the I.O. who had conducted the investigation and in what manner the investigation has been done and the other accused person named in the FIR viz., Taufik has been left out in the investigation by not filing charge sheet against him.

In compliance of the aforesaid directions, Mr. Khushal Singh R.P.S., C.O. Tijara, District Alwar is present in person.

Taking into consideration the aforesaid directions, the Registry is directed to list the matter before the appropriate Bench on 28.07.2020.

The Investigating Officer of the case, who is present in person today, shall remain personally present on date fixed.”

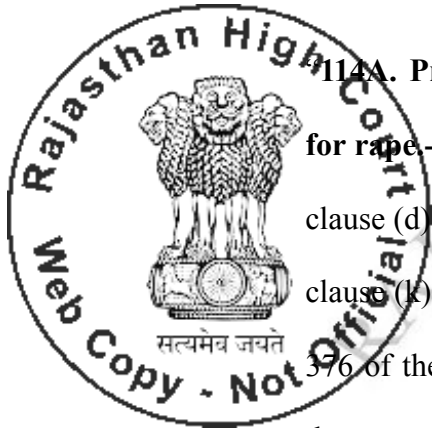
The Investigating Officer is present in the Court today. It is stated that Toufik was not made as an accused as during the investigation, his mobile was found to be located at different places in Haryana as per call details received and therefore, it is presumed that Toufik was not involved in abducting and raping the prosecutrix along with accused-petitioner–Munfed.

This Court is not satisfied with the explanation keeping in view the statement made under Section 164 Cr.P.C. by the





prosecutrix wherein she has stated that she was raped by Toufik. It is a case where the Investigating Officer has attempted to save co-accused Toufik by doubting the statement made under Section 164 Cr.P.C. by the prosecutrix. It goes contrary to the provisions of the Indian Evidence Act. Section 114A of the Indian Evidence Act provides as under:



114A. Presumption as to absence of consent in certain prosecution

for rape.-In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section

376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation.-In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860)."

Thus, the Investigating Officer could not presume otherwise than the statement which is on record. It also weakens the case as against the co-accused. From the perusal of the challan papers, this court finds that the prosecutrix has given the statement under Section 164 Cr.P.C. where her age has been mentioned as 14 years. However, the IO has also on the basis of some report obtained from the Radiologist treated the age of the prosecutrix as between 19 to 21 years which is not possible age of a girl stated to be 13 years by the parents in the FIR and mentioned in the statement under Section 164 Cr.P.C. as 14 years has been changed to 19 years. Apparently, the IO has tried to save the



accused persons which is a serious offence while the concerned competent court may take appropriate action at appropriate stage. The IO is also found to have prima facie committed serious delinquency and requires to be dealt with departmentally.

The Director General of Police is directed to take departmental action and initiate departmental proceedings for major penalty against the concerned Investigating Officer after suspending him from service immediately. The decision taken on the disciplinary proceedings shall also be communicated to this Court.

On merits, I find that no case is made out for grant of bail to the accused petitioner who has been named in the statement of the prosecutrix under Section 164 Cr.P.C. The second bail application is accordingly dismissed. The accused-petitioner shall be free to approach the Court after the statement of the prosecutrix is recorded. The trial Court is directed to get the statement of the prosecutrix recorded at the earliest.

A copy of this order be sent to the Director General of Police for compliance.

(SANJEEV PRAKASH SHARMA),J

FATEH RAJ BOHRA /6-82