

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26275-2015 (O&M)
Date of Decision: 20.08.2015

Jhanda Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

- 1. *Whether Reporters of the local papers may be allowed to see the judgment?***
- 2. *To be referred to the Reporters or not?***
- 3. *Whether the judgment should be reported in the digest?***

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab
for the State.

Mr. A.G.S. Dhillon, Advocate
for the complainant.

R.P. Nagrath, J. (Oral)

This petition under Section 439 Cr.P.C. has been filed by petitioner for grant of regular bail in case FIR No.135 dated 28.08.2013 under Sections 354, 354-A, 376, 34 IPC, Police Station Sadar Dirba, District Sangrur.

I have heard learned counsel for the petitioner and learned State counsel assisted by Mr. AGS Dhillon, Advocate for the complainant.

The allegations against the petitioner and his co-accused

are that four of them committed gang rape with the prosecutrix turn by turn. It is submitted by learned State counsel that the charge against the accused is of gang rape under Section 376D of the Indian Penal Code.

A Special Investigating Team was constituted and it was found that the offence attracted would be Section 354-A IPC and Section 376 IPC was not made out. The petitioner was arrested on 22.10.2013 and granted regular bail by the Addl. Sessions Judge on 29.11.2013. Thereafter further investigation was ordered and again Special Investigating Team was constituted and it was found ultimately that offence under Section 376 IPC was not made out.

When the challan was presented, the learned Magistrate formed an opinion from the version set up in the challan that offence under Section 376 was prima-facie attracted and committed the case to the Sessions Court. The petitioner was thus again arrested on 07.07.2015.

It is not disputed that the petitioner and the three co-accused are witnesses in FIR No.35 dated 28.02.2013 Police Station Dirba under Section 302 IPC etc. relating to murder of the husband of the Chairperson of Nagar Panchayat. Two out of the accused in the instant FIR, namely, Gurmail Singh and Hardeep Sharma are eye-witnesses to said incident of murder, whereas the petitioner and Sukhwinder Singh @ Bhinda are recovery witnesses.

After the grant of regular bail in the instant FIR to the petitioner on 29.11.2013, the petitioner and his co-accused who are

the witnesses in the said murder case appeared and examined in the murder trial. The accused persons in the said FIR No.35 dated 28.02.2013 were convicted of the offence under Section 302 IPC.

Learned counsel for the petitioner further submits that the allegations relating to the offence of rape were considered while granting regular bail to the petitioner on 29.11.2013 by the Sessions Court.

Learned State counsel assisted by learned counsel for the complainant, however, opposed the prayer made on the ground that the allegations are quite serious and charge is of gang rape and complainant/prosecutrix is yet to be examined. It was further contended that the call data of the mobile phones of the accused persons was collected and location has been found to be near the shop where the offence of rape was committed.

It has been observed in the challan report dated 11.01.2015 in the instant FIR with regard to the call details as under:-

“On 01.09.2013, the call details of the complainant in the case Jyoti Kaur's mobile No. 81466-51002 and accused Gurmail Singh's mobile phone number 98158-46075, Hardeep Sharma's mobile phone number 92160-00051, accused Jhanda Singh's mobile phone number 97795-76556 and Sukhwinder Singh alias Bhinda's mobile number 98783-02560, as per which the complainant in the case Jyoti Kaur from her mobile had made three calls on accused Gurmail Singh's mobile No.98158-46075 on

the date of the incident on 27.08.2013 at 11.44 am , 12.36 pm, 1.12 pm.”

The learned counsel for the petitioner then submitted that the prosecutrix has been introduced by the accused persons of FIR No.35 dated 28.02.2013 of murder case.

Having given my thoughtful consideration to the aforesaid circumstances, I find that it cannot be just a coincidence that all the four accused persons who are witnesses in the case of murder relating to the same police station registered about six months before this FIR are involved in the same FIR recorded by a girl who also belongs to the same area.

As per the report of the Forensic Science Laboratory, no spermatozoa were detected in the vaginal swabs but learned counsel for the complainant submits that the doctor who prepared the report is being prosecuted in FIR No.290 dated 29.10.2013, Police Station Tarn Taran for preparing innumerable false reports

That may not be so significant a factor for disposal of bail application and would always be a question to be determined at the trial. It is contended that the petitioner never threatened the complainant during the period of one and half year during which he remained on regular bail.

In view of the aforesaid, I find that it is a fit case where the petitioner deserved to be allowed bail.

Without commenting on merits of the case, keeping in view the fact that the trial will take time in conclusion and the above

facts and circumstances, the instant petition is allowed and petitioner be admitted to bail on furnishing bail bonds to the satisfaction of trial Court.

(R.P. Nagrath)
Judge

20.08.2015
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