

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-8209 of 2015 (O&M)

Date of Decision: 16.07.2015

Joginder Singh @ Jindri & another

--Petitioners

Versus

State of Punjab

--Respondent

CORAM:-HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. L.S. Mann, Advocate for the petitioners.

Mr. Nikhil K. Chopra, D.A.G., Punjab.

Mr. A.S. Dhaliwal, Advocate for the complainant.

TEJINDER SINGH DHINDSA.J

The instant petition has been filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioners in case F.I.R. No. 297 dated 14.10.2013 under Section 376 (2) I.P.C, registered at Police Station, Sadar Nakodar, District Jalandhar.

Counsel for the parties have been heard.

F.I.R was got registered on the statement of Parveen wife of late Sh. Prem with the allegations that on 11.10.2013 she had gone to visit her relatives at village Madara and while she was waiting to catch a bus at Nakodar Chowk, Jalandhar, at about 4.30 P.M, one Tata Estate vehicle stopped next to her in which she saw the present petitioners i.e. Joginder Singh @ Jindri and Shinder Singh @ Shinda sitting inside and who were earlier known to her. It was further stated that upon an offer having been made by the afore-noticed two persons of being dropped near the railway crossing of her village, she sat in the vehicle. Further allegations are that the accused/present petitioners thereafter gagged her mouth with her dupatta and having taken her to the bushes along side the link road leading to

village Gadra, rape was committed upon her. Further statement was that she had fell unconscious and upon regaining consciousness, she found herself alone and as such, called her son Bunty from her mobile phone and asked him to come at the spot so as to take her to Civil Hospital, Nakodar.

It would be pertinent to take notice of an application dated 29.9.2014 filed by the Investigating Officer i.e. S.H.O., Police Station, Sadar Nakodar and presented before the court of learned S.D.J.M., Nakodar and the same having been placed on record and appended at Annexure P-6. The contents of such application would reveal that upon the case having been registered and investigation having been done, no evidence was forthcoming regarding commission of rape by the present petitioners. Still further, the I.O had stated that even the presence of the complainant at the alleged place of occurrence was neither proved nor corroborated. Accordingly, a prayer was made for conducting a D.N.A Test of the accused persons/present petitioners.

The contents of the application at Annexure P-6 are not disputed.

The application preferred by the investigating agency was dealt with by the learned S.D.J.M., Nakodar in the light of an order dated 17.11.2014 and which reads in the following terms:-

“Heard on the application filed by SHO, P.S. Sadar Nakodar for DNA test of accused Joginder Singh and Shinder Singh. The said DNA test of any person accused of the offence of rape is mandatory now as per Section 53-A of the Criminal Procedure Code, 1973 and as has been clarified by the Hon'ble Supreme Court of India in “Krishan Kumar Malik Vs. State of Haryana” reported at 2011 (3) Criminal Court Cases 427 (SC). Accordingly, the application is admitted and

the accused are directed to cooperate with the concerned police for the purpose of their DNA test in order to further the investigation of this case. It is clarified that accused have also demanded DNA test of some other persons along with them but since they have no such right to dictate the manner in which the investigation should be carried out, their request is declined.”

It is strange that inspite of directions having been issued and permission having been granted to the investigating agency for conduct of DNA test of the accused/present petitioners on 17.11.2014 and the petitioners having been arrested on 10.12.2014, yet, no DNA test was conducted. It is also intriguing that instead of conduct of DNA test which would have been most crucial in the facts and circumstances of the case, challan was presented on 2.2.2015.

Yet another material discrepancy that has been pointed out by learned counsel for the petitioners is that in the initial statement made by the prosecutrix which led to the registration of FIR, she had clearly stated that, **“she had called her son Bunty on a mobile phone and had revealed everything about the incident”** but on the other hand in the statement of Bunty recorded under Section 161 Cr.P.C, he had stated that **“My mother did not convey anything regarding the incident which happened with her”**.

The petitioners have been in custody since 10.12.2014.

Learned State counsel upon instructions from ASI Kulwinder Singh has apprised the Court that even though, challan has been presented and charges have been framed but no prosecution evidence has been led till date. The trial, as such, is at the initial stage and would take some time to conclude.

In the light of the peculiar facts and circumstance noticed herein above, this Court is of the considered view that the petitioners are entitled to the benefit of regular bail.

As such, without making any observations on merits, present petition is allowed.

Petitioners be enlarged on bail subject to satisfaction of Trial Court.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

16.07.2015

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