

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc. No.M- 14338 of 2017(O&M)

Date of Decision: May 2 , 2017.

Gurlabh Singh @ Kana PETITIONER (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

Mr. K.D.Sachdeva, Addl.AG, Punjab.

1. Whether reporters of 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?

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No.67 dated 25.07.2016 under Sections 363/366A/120B IPC (the offence punishable under Section 376 IPC added later) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Sadar Bathinda, District Bathinda.

It is submitted that the petitioner has been falsely implicated merely because of his relationship with the co-accused Dharam Singh @ Ashoki. Co-accused Dharam Singh @ Ashoki is the petitioner's younger

brother. As per the allegations in the FIR, Dharam Singh @ Ashoki enticed the complainant's daughter on 25.07.2016 on a false promise of marriage. It is submitted that the petitioner's younger brother Dharam Singh @ Ashoki is about 16 years old and the complainant's daughter is about 15 years old. Both of them were friendly with each other and the step, if any, taken by them cannot be attributed to the present petitioner in any manner. The medical evidence does not in any manner suggest the commission of the offence punishable under Section 376 IPC or Section 4 of the Protection of Children from Sexual Offences Act, 2012. Challan/final report under Section 173 Cr.P.C. has since been presented. The petitioner has been in custody since 26.07.2016. Therefore, this petition be allowed.

Learned counsel for the State, on instructions from HC Rajinder Singh, verifies that the challan/report under Section 173 Cr.P.C. has been filed and charge against the petitioner has been framed.

I have heard learned counsel for the parties and have gone through the file.

It is to be noted that the medical examination of the complainant's daughter was conducted on 26.07.2017. The same reads as under:-

“Patient is conscious, cooperative well oriented to time, place and person. Her vitals stale. She gave history of some medicine given by some person at night on 25/7/2016. She said, she know nothing after that.

O/E. No injury marks were present over body. Her genitalia were normal. No injury marks were present. LMP – 4/7/2016. Her gait normal. No complaints.

O/E P/V – Hymen intact, very slight fresh oozing seen, when 2

vaginal swabs taken and sent for chemical examination for presence of spermatozoa.

No fresh injury marks were present over genitalia. Her clothes i.e. Salwar, Kameez, underwear taken and sealed and sent for chemical examination for present of spermatozoa.

Final opinion will be given after the report of chemical examination.”

The petitioner is admittedly not involved in any other case. Trial in this case is not likely to conclude in the near future. No recovery is to be effected from the petitioner. There are no allegations on behalf of the State that the petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail. His further incarceration is not justified in the facts and circumstances of this case.

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, this petition filed by Gurlabh Singh @ Kana is allowed. The petitioner shall be released on bail pending trial subject to his furnishing requisite bail bonds and surety bonds to the satisfaction of the learned Trial Court.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

(LISA GILL)
JUDGE

May 2 , 2017.
'om'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No