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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. Criminal Misc. No.M- 15708 of 2017(O&M)
Date of Decision: October 30 , 2017.

Sukhpal Singh PETITIONER(s)

Versus

State of Punjab RESPONDENT (s)

2. Criminal Misc. No. M- 32892 of 2017(O&M).

Sarabjit Singh PETITIONER(s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sukhpreet Grewal, Advocate and
Mr. B.S.Sohal, Advocate
for the petitioners.

Mr. Saurav Khurana, DAG, 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.

This order shall dispose of CRM No.M-15708 of 2017 (Sukhpal Singh v. State of Punjab) as well as CRM No.M-32892 of 2017 (Sarabjit Singh v. State of Punjab).

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The petitioner – Sukhpal Singh in CRM No.M-15708 of 2017 prays for bail pending trial in FIR No.68 dated 06.07.2016, under Sections 363/366/376/328 IPC registered at Police Station Balongi, District Mohali, whereas the petitioner – Sarabjit Singh in CRM No.M-32892 of 2017 seeks the concession of anticipatory bail in the abovesaid FIR.

As per the allegations in the FIR, the complainant was pursuing the discipline of law at Chandigarh University, Gharuan. She was 26 years old at the time of the incident. It is stated that the complainant came in contact with the petitioner in the year 2012 through FaceBook (though it is not denied that the petitioner and the complainant studied together in school). The petitioner – Sukhpal Singh came to Chandigarh on 19.04.2016. Communications between the complainant and Sukhpal Singh are not denied. The complainant and the petitioner went to a restaurant in Sector 35, Chandigarh, had Paranthas in the market of Sector 10-11, Chandigarh. The petitioner – Sukhpal Singh allegedly came to drop the complainant at the place where she was staying alongwith a roommate. He said that he would sleep in his car. As the petitioner – Sukhpal Singh had no place to stay the night, a request was made by the complainant to her roommate to allow him to sleep in their flat but she refused to allow the petitioner – Sukhpal Singh to stay there. The complainant asked some other persons nearby who also refused to accommodate him. Consequently, arrangements were made at a hotel at Kharar. The victim accompanied the petitioner to the said hotel. The petitioner – Sukhpal Singh is alleged to have violated the person of the complainant in the hotel at Kharar after administering

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a cold-drink laced with an intoxicant to her. The petitioner – Sukhpal Singh is also alleged to have clicked some obscene pictures and videos. The petitioner assured the complainant of getting married with her. He thereafter came to her flat on 13.05.2016 and told her that his father was ready for their marriage. He spent the night at the complainant's flat and maintained physical relations on allurement of marriage. Thereafter, the petitioner – Sukhpal Singh refused to marry the complainant despite his assurance that he would ultimately marry her. The abovesaid FIR was registered on the said allegations.

The petitioner – Sarabjit Singh in CRM No.M-32892 of 2017 is sought to be inculpated on the statement of the complainant recorded under Section 164 Cr.P.C. wherein allegations are levelled to the effect that both the accused persons violated her person. The petitioner – Sarabjit Singh was found innocent during investigation. He was summoned by the learned trial court to face trial as an additional accused on an application under Section 319 Cr.P.C.

Learned counsel for the petitioner – Sukhpal Singh contends that the relationship, if any, between the complainant and the petitioner was clearly consensual in nature. The complainant and the petitioner – Sukhpal Singh, admittedly, knew each other since their school days. Learned counsel while referring to various text messages between the present petitioner and the complainant as well as the statement of the complainant recorded before the learned trial court, submits that the consensual nature of the relationship, if any, is apparent on the face of it. The delay in lodging of the FIR is indicative of the falsity of the allegations. It is further urged that neither the complainant's

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roommate or any other person has been cited as a witness to substantiate her allegations. Moreover, the petitioner has been in custody since 03.12.2016. The complainant/prosecutrix in this case has testified before the learned trial court. Trial in this case is not likely to conclude in the near future. Therefore, it is prayed that this petition filed by Sukhpal Singh be allowed.

Learned counsel for the petitioner – Sarabjit Singh submits that the said petitioner was admittedly found innocent during investigation. Moreover, the complainant in her testimony before the trial court has not raised any allegations attracting the rigours of Section 376 IPC against Sarabjit Singh. The petitioner appeared before the learned trial court pursuant to order dated 14.09.2017 passed by this Court. The petitioner undertakes to appear before the learned trial court on each and every date fixed and face trial. Therefore, it is prayed that his petition be allowed.

Copy of the statement of the complainant before the learned trial court, produced in Court today, is taken on record subject to just exceptions.

Learned counsel for the State opposes these petitions. It is submitted that there are specific allegations against the petitioner – Sukhpal Singh. False assurance of marriage was meted out by the said petitioner and thereafter, the victim in this case was subjected to rape. It is however not denied that there is no medical evidence on record and FIR in this case was registered after seventy eight days of the alleged incident in question. Learned counsel for the complainant does not deny that the petitioner and the victim were known to each other since their childhood, though it is submitted that they had lost touch in the interregnum and had regained contact through FaceBook.

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Learned counsel for the State, on instructions from ASI Dilbagh Singh, verifies that the petitioner – Sarabjit Singh has appeared before the learned trial court pursuant to order dated 14.09.2017. It is not denied that the victim/complainant in this case has not raised any allegations in her testimony before the trial court attracting the rigours of Section 376 IPC against the said petitioner.

There are no allegations on behalf of the State that the petitioners are likely to abscond or that they are likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, both the petitions i.e., CRM No.M-15708 of 2017 filed by Sukhpal Singh and CRM No.M-32892 of 2017 filed by Sarabjit Singh are allowed.

The petitioner – Sukhpal Singh shall be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned Trial Court.

Interim bail afforded to the petitioner – Sarabjit Singh pursuant to order dated 14.09.2017 passed by this Court be made absolute subject to his furnishing fresh bail bonds and surety to the satisfaction of the learned trial court.

It is made clear that none of the petitioners shall not directly or indirectly try to contact the complainant/victim or any of her family members in any manner. Any such infraction on the part of the petitioners may entail

cancellation of his bail.

Needless to say 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 petitions.

October 30 , 2017.
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(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No