

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-2789-2017(O&M)

Date of decision: 27.04.2017

Chattar Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vaibhav Narang, Advocate for the petitioner.

Mr. Deep Singh, AAG, Punjab, for the complainant.

LISA GILL, J.

The petitioner prays for bail pending trial in case FIR No. 222 dated 05.10.2010, under Sections 376, 506 and 376(g) IPC, registered at Police Station A Division, Amritsar, District Amritsar.

It is submitted that the petitioner is over 60 years of age and has been falsely implicated in this case at the hands of none other but his real brother, Suchwant Singh.

It is submitted that on investigation in the present case, the police had found the petitioner to be innocent. Cancellation of the above-mentioned FIR was recommended in the year 2010. However, subsequently a special investigating team was constituted in the year 2014. The complainant on 29.06.2014 recorded her statement giving the names of the petitioner along with Jaswinder Singh and Harpreet Singh. The co-accused Jaswinder Singh @ Kala was arrested and tried. Proclamation proceedings were initiated against the petitioner. Jaswinder Singh @ Kala has been acquitted by the learned trial Court on 20.11.2015 (Annexure P/3). The petitioner, it is submitted, came to know about the pendency of this FIR

against him at a much later stage and he surrendered on 04.03.2016. It is submitted that the petitioner was residing at his given address. Proper procedure was not followed before declaring him a proclaimed offender. No notice was ever served upon him. He is facing trial in the said case. The statement of the prosecutrix has been recorded.

Learned counsel for the petitioner submits that the allegations in the FIR are patently false. It is apparent that petitioner has been implicated at the behest of his brother Suchwant Singh. As per the allegations in the FIR, the complainant has stated that she went to S.G.R.D. Mehta Road, Amritsar Hospital on 04.10.2010 at about 10.00 A.M. for a medical check up. Two persons riding a motorcycle with muffled faces came inside the hospital, administered a poisonous substance due to which she became unconscious. They abducted her and took her to a secluded place. It is stated that when she regained consciousness, she realised that hospital did not have proper security arrangements. Another man had accompanied the two men with muffled faces. They committed rape upon her one after the other. The said three accused persons telephonically called more men at the spot. Four men in police uniform arrived in a white coloured car. It is alleged that the said four persons also committed rape upon her. Her mobile phone was with the accused persons. The said persons called up another man who arrived in the uniform of Station House Officer in his own car. He directed that the complainant be taken to his place at night as he was on duty having a lot of work to do. It is alleged that all the seven men violated the complainant one after the other. The police officials, thereafter, handed her over to three of the other persons and went away. All the abovesaid persons violated her. It is stated that she somehow

managed to escape from their clutches and reached a nearby behak/baithak/dera (sitting area in a residence). The complainant narrated the incident to the people sitting there along with the description of the perpetrators of the crime. The people sitting at the behak identified one of the men as the petitioner Chattar Singh. Mobile phone of the petitioner is also mentioned in the FIR. It is alleged that the petitioner had followed her and a lady sitting in the bus also revealed that this man might be Chattar Singh. (There is no detail or clarity regarding travel in the bus except the isolated mention) It is further alleged that petitioner knew all about the other persons as well as the police officials. All the said persons violated her, used filthy language and threatened to kill her or involve her in a false case if she revealed anything about the incident. They proclaimed that they are very well placed having considerable influence. Therefore, she cannot do anything against them.

Learned counsel for the petitioner submits that admittedly the behak/dera where the complainant allegedly reached after escaping from the hands of the persons violating her, belongs to the petitioner's brother. An FIR No. 85 dated 01.06.1998 was registered at the behest of the petitioner against his brother Suchwant Singh as well as six other persons. Charge was framed against him (Annexure P/6). It is however fairly admitted that the accused in the said case was acquitted. When the complainant deposed before the learned trial Court in the present case, it is submitted that she conveniently skipped the version regarding her escape to the behak/dera nearby. She stated that two persons with muffled faces entered the hospital, made her inhale sedative material and took her to a secluded place. When she regained consciousness, she saw four policemen present at the spot as

well. The petitioner was being addressed as Chattar Singh by the said police officials. It is submitted that she has deliberately changed the version before the learned trial Court. She stated before the learned trial Court that when she regained consciousness one Harjit Singh, Kulwant Singh, Kukkar Khan and Jaswinder Singh @ Kala were present. She admits that no test identification parade in respect to the petitioner was conducted. It is submitted that the petitioner is in custody since 04.03.2016. The prosecutrix/complainant has already been examined before the learned trial Court. Further incarceration of the petitioner is not called out in the facts and circumstances of this case.

Learned counsel for the petitioner points out that the medical evidence on record further points out to the falsity of the prosecution version. No injuries were found on person of the prosecutrix which totally negates the allegation that she was violated by seven persons.

The petitioner undertakes that he shall be available to face trial. He can be put to terms. He is a permanent resident of village Sehansara Kalan, District Amritsar. There is no possibility of his absconding. He admittedly surrendered himself when he came to know about the pendency of this case. Therefore, this application be allowed.

Learned counsel for the State has opposed this application while submitting that there are specific allegations against the petitioner who had earlier been declared a proclaimed offender. He, however, does not deny that co-accused Jaswinder Singh @Kala has since been acquitted by the trial Court on 20.11.2015. The prosecutrix has admittedly been examined.

I have heard learned counsel for the parties. I have gone

through the file including the statement of the prosecutrix before the learned trial Court (Annexure P/5). The complainant admittedly did not know the petitioner earlier. The prosecution witnesses except the victim/prosecutrix are yet to be examined. Trial in this case is not likely to conclude in the near future. No useful purpose shall be served by keeping the petitioner incarcerated any longer.

Keeping in view the facts and circumstances of this case, it is considered just and expedient to allow this petition. Consequently, the petitioner shall be released on bail pending trial subject to his furnishing requisite heavy bail bonds and atleast two local sureties to the satisfaction of the learned trial Court.

It is further directed that the petitioner shall not try to contact the victim/complainant or any of the witnesses directly or indirectly in this case. He shall be available before the learned trial Court on each and every date fixed. In case the petitioner is found to have misused the concession of bail in any manner, opportunity is afforded to the prosecution/complainant to move an application for cancellation of bail granted to him.

Petition stands disposed of.

April 27, 2017
Divyanshi

(LISA GILL)
JUDGE

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