

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

Criminal Misc. No.M- 3312 of 2017(O&M)

Date of Decision: December 21 , 2017.

Shiva PETITIONER (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Prashant Vashisth, Advocate
for the petitioner.

Mr. Rahul Rathore, 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.

The petitioner prays for bail pending trial in FIR No.23 dated 01.03.2016 under Sections 363/366A/376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Jamalpur, Ludhiana City.

It is submitted that the petitioner has been falsely implicated in this case. The petitioner, who himself is about 20 years old, had friendly relations with the alleged victim i.e., the daughter of the complainant. The victim out of her own free will accompanied the petitioner on 01.03.2016. They solemnized marriage and thereafter stayed together. The victim was recovered in his company on 03.05.2016. It is submitted that the victim in this case was major at the time of

the occurrence. Reference is made to a report (Annexure P5) submitted by the Department of Radiology, L.M. Civil Hospital, Ludhiana, wherein the age of the victim is opined to be between 17 to 19 years. Moreover, the complainant and victim are not coming forward to depose before the learned trial court. It is thus prayed that the petitioner, who is in custody since 03.05.2016 and not involved in any other criminal proceedings, be granted the concession of bail pending trial.

Learned counsel for the State opposes this petition while submitting that the victim in this case was a minor at the time of the incident, her date of birth being 17.07.1999 as per the school leaving certificate. Therefore, the question of consent or otherwise of the victim is irrelevant. However, it is not denied that the complainant and the victim are not coming forward to depose before the learned trial court.

It is noted that this petition was adjourned on various occasions to ensure that the victim and the complainant are examined before the learned trial court. Ultimately, a report from the learned trial court was called for in respect to the reasons for non-examination of the victim, despite the direction of this Court. A perusal of the report dated 07.12.2017 received from the learned Additional Sessions Judge, Ludhiana reveals that the victim has not come forward to depose before the learned trial court. The detailed position, which is not being reproduced for the sake of brevity, has been narrated in the said report. It is noticed that the complainant was ultimately bound down for 19.12.2017 and the remaining witnesses were summoned throughailable warrants for the said date.

It is however informed by learned counsel for the State that neither the complainant nor the victim came present before the learned trial court on

19.12.2017 and the matter is now listed before the learned trial court on 16.01.2018.

The petitioner is not reported to be involved in any other criminal case. He is in custody since 03.05.2016. Trial in this case is not likely to conclude in the near future. No useful purpose would be served by keeping the petitioner incarcerated any longer in the peculiar facts and circumstances of this case. 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 before the Court, if released on bail.

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

It is made clear that the petitioner shall not try to contact the complainant, victim or any of her family members directly or indirectly in any manner. Any such infraction on the part of the petitioner may entail cancellation of his bail.

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.

December 21 , 2017.
'om'

(LISA GILL)
JUDGE

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