

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

**Criminal Misc. No.M-35220 of 2017(O&M)
Date of Decision: December 04, 2017.**

Satish

Petitioner.

Versus

State of Haryana

Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Parminder Singh, Advocate
for the petitioner.

Mr.Sanjay K. Saini, AAG, Haryana.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No 40 dated 13.02.2017, under Sections 318 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Taraori, District Karnal.

As per allegations in the FIR, it is stated that the complainant who is a resident of the address mentioned therein, was informed by his neighbour at about 07.30.a.m. on 13.02.2017 that a new born foetus was lying in front of his house. The complaint went out and discovered a female foetus of about 7-8 months. Its head and both hands were eaten by the animals. It is stated that the foetus was thrown in the vacant plot by an unknown lady by concealing birth of the child. It was prayed that the mother of the child be traced out and action be

taken against her in accordance with law.

The mother who delivered the foetus was traced out from the record of the Civil Hospital, Taraori. In her statement under Section 164 Cr.P.C., she stated that the present petitioner, who was working as a mason, residing in the neighbourhood, had called her to his house a number of times and had ravished her. When, she conceived, she revealed this fact to the petitioner, who left for Hyderabad. It is stated by the alleged victim that she did not reveal the aforesaid occurrence to anyone. A still born girl child was delivered. The petitioner was thus sought to be inculpated.

Learned counsel for the petitioner vehemently argues that no offence punishable under Section 318 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, is made out against him. The petitioner, it is stated himself surrendered on 20.03.2017 when he came to know that such allegations were raised against him. He voluntarily gave his samples for DNA testing. The petitioner is not involved in any other criminal case. It is further submitted that the prosecutrix in this case is not coming forward to testify before the learned trial Court. It is thus prayed that this petition be allowed.

Learned counsel for the State has furnished a photocopy of report dated 13.11.2017 regarding DNA testing. Same is taken on record subject to just exceptions. As per the said report, it is concluded that the autosomal STR analysis indicates that DNA profile of source of item no. 2(tissue) is not matching with DNA profile of item no. 3 (of the alleged victim) and item no. 4(Satish) hence concluding that they are biologically not related.

Learned counsel for the State, on instructions from ASI Krishan Lal, Police Station Taraori, further verifies that the prosecutrix who was summoned

for 11.09.2017 did not appear. Thereafter, she did not come present on 17.11.2017 as well. Now, she has again been summoned by the learned trial Court for 06.02.2018. The petitioner is not reported to be involved in any other criminal case. No recovery is to be effected from him. 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 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 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, this petition filed by petitioner-Satish, 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 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.

It is made clear that the petitioner shall not attempt to contact the victim or any of her family members directly or indirectly. Any infraction in this regard may entail cancellation of his bail.

04.12.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.