

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

**CRM No. M-5315 of 2017 (O&M)
Date of decision: 06.04.2017**

Kuldeep Kaur @ Aunty @ Mamta

..... Petitioner.

Versus

State of Punjab

..... Respondent.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajesh Bhatheja, Advocate, for the petitioner.

Mr. Deep Singh, AAG, Punjab.

LISA GILL, J.

CRM No. 11606 of 2017

Copy of medical examination report of complainant Rajveer Kaur Annexure P-4 is taken on record subject to just exceptions.

Application stands disposed of.

CRM-M No. 5315 of 2017

The petitioner prays for grant of bail pending trial in FIR No. 67 dated 27.04.2016 registered under Sections 376,323,34 of the Indian Penal Code (for short 'IPC') at Police Station Moga City, District Moga.

As per the allegations in the FIR the petitioner is alleged to have forcibly caught the complainant from her arms while her person was violated by the co-accused. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. The complainant is a married lady. The petitioner and the victim/complainant are living in nearby rooms in the same building. The site plan reflecting this position is a part of the challan/final report. There are other occupants in the other rooms on the same premises/building, thus it is highly probable that such an incident would have taken place at 9 p.m. The allegations in the FIR are not borne

out from the medical evidence. Reference is made to the medico legal report to submit that no injury was found on the arms of the victim and neither is there any evidence to show that she was administered any intoxicant whatsoever. Furthermore, it is submitted that there is an unexplained delay in lodging the FIR. The incident is alleged to have taken place at 9 p.m. on 25.04.2016 and FIR was lodged on 27.04.2017. While relying upon judgment of the Hon'ble Supreme Court in **Priya Patel Vs. State of M.P. and another** 2006 (3) R.C.R (Criminal) 545, it is submitted that the offence punishable under Section 376 read with Section 34 cannot be attracted qua the petitioner as she is a lady. The petitioner, it is submitted, has been in custody since June, 2016 and is not involved in any other case. Therefore, this petition be allowed.

Learned counsel for the State on instructions from HC Sukhdev Singh does not deny the veracity of the medico legal report annexed as Annexure P-4.

Heard learned counsel for the parties.

The challan/final report under Section 173 Cr.P.C in this case has been filed. It is not denied that at this stage there is no evidence on record to show administration of any intoxicant to the complainant neither is there any evidence to show that the complainant was forced to drink tea laced with some intoxicant substance. Medico legal report, Annexure P-4 is also not in dispute. Undoubtedly the final report under Section 173 Cr.P.C has been presented. It is evident that trial in this case is not likely to conclude in the near future. The petitioner is admittedly not involved in any other case. It is not in dispute that the complainant as well as the petitioner are living in separate rooms in the same building. The other rooms on the same premises are occupied by other occupants. There is no allegation that

the petitioner is likely to abscond or influence witnesses to dissuade them from deposing true facts in Court. Therefore, without expressing any opinion on the merits of the case, it is considered just and expedient to allow this petition.

Consequently, the petitioner- Kuldeep Kaur @ Aunty @ Mamta shall be released on bail pending trial in case FIR No. 67 dated 27.04.2016 registered under Sections 376,323,34 of the IPC at Police Station Moga City, District Moga subject to her furnishing requisite bail bonds and surety bonds to the satisfaction of the learned trial Court.

None of the observations in this order shall be construed to be a reflection on the merits of the case and shall have no bearing on the trial.

06.04.2017

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(LISA GILL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No.</i>
<i>Whether reportable</i>	:	<i>Yes/No.</i>