

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

CRM-M-18222-2018 (O&M)

Date of Decision: 07.05.2018

Balwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manbir Singh Basra, Advocate
for the petitioner(s).

Mr. Pawan Sharda, Sr. D.A.G., Punjab

Mr. Sunil Agnihotri, Advocate
for the complainant.

ANITA CHAUDHRY, J

The petitioner is seeking regular bail in FIR No.42 dated 09.11.2016, registered under Sections 376-D, 380, 323, 324, 452 and 506 of IPC at Police Station Bhaini Mian Khan, District Gurdaspur.

Learned counsel for the petitioner contends that the petitioner is nephew of the complainant and he is 20 years old whereas the complainant is over 40 years of age. The counsel contends that there has been an earlier FIR in which similar allegations of rape were levelled and the trial had ended in acquittal and the Court had ordered the prosecution of the complainant and had directed the Reader of the Court to file a complaint under Sections 193, 194 IPC and Section 340 of Cr.P.C. It was urged that there is a dispute regarding property. It was urged that one incident is alleged on 04.11.2016 at 6:00 p.m. and then on 05.11.2016 at 3.30 a.m. and

the FIR relating to 05.11.2016 incident had been lodged 4 days later. Counsel also contends that the petitioner is in custody for over 6 months. Counsel further contends that the complainant is a widow and living with her children.

The complainant as well as the State counsel have opposed the bail application and the counsel appearing for the State states that the complainant's husband was murdered and the allegations were upon the petitioner's family. It was urged that the FSL report has shown the presence of spermatozoa. Counsel further refers to the order of the Court below and states that the complainant was brutally beaten and the injuries are noted on Page-3 of the order.

The State counsel states that there is only one MLR which is of 05.11.2016. A copy of it was shown at the time of arguments. A photocopy has also been placed on record. This MLR only refers to the assault. The second MLR is said to have been conducted on 10.11.2016 when vaginal swabs were taken. Admittedly, there is civil and criminal litigations going on between the parties. The complainant had also lodged an FIR against the petitioner. The first trial ended in acquittal. The allegations there were of attempted rape. No DNA test has been carried out. The FIR had been lodged after 4 days. The trial Court will have to determine the time of discharge from the hospital that night and decide whether the second incident could have occurred at 3.30 a.m. the same night.

The investigation is over and challan has been presented. Without commenting anything on the merits of the case, the petition is allowed. The petitioner is ordered to be released on bail on his furnishing surety and adequate bonds to the satisfaction of the trial Court/Duty

Magistrate with a rider that the petitioner would not contact the complainant's side or tamper with evidence.

May 07, 2018
ps-I

(ANITA CHAUDHRY)
JUDGE

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