

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

Criminal Misc. No.M-23909 of 2017(O&M)

Date of Decision: March 08, 2018.

Harbans Lal

Petitioner.

Versus

State of Punjab

Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.D.S.Kahlon, Advocate
for the petitioner.

Mr. Anmol Singh Sandhu, AAG., Punjab.

LISA GILL, J.

CRM-3849 of 2017.

Heard.

Application is allowed as prayed for.

Office is directed to amend the head note and prayer clause accordingly.

CRM-M-23909 of 2017.

This is the petitioner's third petition seeking the concession of bail pending trial in FIR No.30 dated 12.05.2016, under Sections 354-A, 376 IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Behrampur, District Gurdaspur.

The FIR was registered on the basis of a statement of the complainant to the effect that her daughter aged six years had gone to the shop of the petitioner on 11.05.2016 at 6.00.p.m to purchase a rubber and pencil. She

returned after about fifteen minutes with a rubber and pencil, but was very disturbed. On inquiry, she revealed that the petitioner had removed her undergarment and inserted finger in her vagina and later left her. It is further stated that as the complainant's husband was not at home, she waited for him and disclosed the incident upon which the matter was narrated to the village Sarpanch and respectables. FIR was lodged on the next day on 12.05.2016. The petitioner was proceeded against for the offences punishable under Section 354-A IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012.

Learned counsel for the petitioner argues that the petitioner aged about 65 years retired from the Armed Forces and after retirement was running a Karyana shop in the village. After the death of his son, he has got his daughter-in-law remarried. His granddaughter is residing with him. It is argued that it is unimaginable that the alleged offence would be committed by the petitioner. The petitioner, it is submitted has been falsely implicated in this case because the complainant and her family had taken goods worth ₹40,000/- from his shop. They were not repaying the said amount despite requests. Due to this reason he has been falsely implicated in the present case. It is vehemently argued that there is no medical evidence on record as admittedly the complainant refused to have the medical examination of the victim conducted. Petitioner's second application for bail was disposed of by this Court on 16.02.2017 while observing as under:-

“Counsel for the State of Punjab, on instructions from ASI Satnam Singh, has apprised the Court that all other witnesses except one official witness have already been examined and the case is now fixed on 8.3.2017.

Counsel for the State is directed to ensure presence of the witness before the trial court on that date and the trial court would further ensure that witness is examined on the date fixed. In view of the above, the petition is disposed of.”

Learned counsel for the petitioner argues that thereafter, in a *mala fide* manner, an application was moved on 22.03.2017 for addition of the offence punishable under Section 376 IPC. The amended charge was framed against the petitioner on 16.08.2017. None of the witnesses have since been examined. The petitioner has been in custody since May 2016. It is thus prayed that this petition be allowed.

Learned counsel for the State is unable to deny that CRM-M-43629 of 2017 was disposed of by this Court on 16.02.2017 as detailed above. Thereafter, the application for amendment of charge was moved. None of the prosecution witnesses have been examined after the amendment of the charge. It is further confirmed that medical examination of the victim was not conducted as the complainant had refused for the same. On instructions from ASI Nachattar Singh, it is verified that the petitioner retired from the Armed Forces and was running a Karyana shop in the village and is not involved in any other criminal 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. The petitioner is in custody since May 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 facts and circumstances of this case.

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 Harbans Lal, 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.

Petitioner shall not attempt to contact the victim or any of her family members/witnesses in any manner directly or indirectly. Any such infraction shall entail cancellation of bail afforded to him.

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.

08.03.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.