

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

**Criminal Misc. No.M-42619 of 2017(O&M)
Date of Decision: February 20, 2018.**

Raj Bahadur @ Raju

Petitioner.

Versus

State of Punjab

Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Naveen Sharma, Advocate
for the petitioner.

Ms. Monika Jalota, DAG., Punjab.

LISA GILL, J.

CRM-39335 of 2017.

Annexure P-3, is taken on record subject to just exceptions.

Application is disposed of.

CRM-M-42619 of 2017.

Petitioner seeks the concession of bail pending trial in FIR No.178 dated 21.10.2014, under Sections 376(D), 506, 323, 120-B IPC and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 1012, registered at Police Station Sadar Jagraon, District Ludhiana (Rural).

It is submitted that the petitioner has been falsely implicated in this case and this fact has emerged in the testimony of the prosecutrix herself as rendered before the learned trial Court. Reference is made to her statement dated 30.10.2017 before the learned trial Court (Annexure P-3), wherein the prosecutrix

has specifically stated that the present petitioner never committed any wrong act with her neither did he ever physically abuse her. The prosecutrix (PW-1) further stated that rape was in-fact committed by Noni son of Ranjit Kaur.

Learned counsel for the petitioner submits that the prosecutrix was working as a maidservant in the house of Ranjit Kaur. Rape was in-fact committed by the son of Ranjit Kaur and under her pressure allegations were levelled against the present petitioner, who has nothing to do with the offence in question. Though, in her examination-in-chief, the prosecutrix has stated that rape was committed by the present petitioner, in her cross-examination, which was conducted on the same date, she specifically stated that the present petitioner did not commit rape upon her. It is further submitted that the son of Ranjit Kaur has now been summoned on an application under Section 319 Cr.P.C., and is facing trial. The petitioner has been in custody since November 2014 and is not involved in other criminal case. The trial is not likely to conclude in the near future. It is thus prayed that this petition be allowed.

Learned counsel for the State while opposing this petition submits that the prosecutrix is a young girl and possibility of her having been prevailed upon cannot be ruled out. It is submitted that the prosecutrix supported the prosecution case in her examination-in-chief, though it is undeniable that in her cross-examination conducted on the same day she has turned a volte face and exonerated the petitioner. The prosecutrix has denied that she suffered any statements before the police authorities inculcating the petitioner.

The relevant part of the cross-examination of the prosecutrix reads as under:-

“The accused Raj Bahadur present in Court did not commit any wrong act with me. This accused Raj Bahadur did not give any

beatings to me. The rape was committed with me by Noni son of Ranjit Kaur. The present accused are got involved in this case by Ranjit Kaur.

After the completion of cross-examination by Ld. Defence counsel, the Ld.Public Prosecutor requested for re-examination of the witness to clarify the ambiguity or statement. Heard. Request considered and allowed.

Re-examination by Ld.Public Prosecutor:

It is wrong to suggest that the rape was committed by accused Raj Bahadur alias Raju with me and I have given wrong statement in the cross-examination.”

Needless to say, the effect or otherwise of the prosecutrix resiling from her statement shall be considered by the learned trial Court at the appropriate stage and the same by itself may not necessarily indicate innocence of the petitioner. However, it cannot be lost sight of that the petitioner has been in custody since November 2014. Learned counsel for the State, on instructions from HC Jaswinder Singh, has verified that the petitioner 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. 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 Raj Bahadur @ Raju, is allowed. The petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and heavy local 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.

20.02.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.