

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

**Criminal Misc. No.M-49423 of 2017(O&M)
Date of Decision:May 25, 2018.**

Amit Kumar

Petitioner

Versus

State of Punjab

Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. D.S.Sukarchakia, DAG, Punjab.

LISA GILL, J.

Petitioner seeks the concession of bail pending trial in FIR No.121 dated 02.12.2015, under Section 376 IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Haibowal, District Ludhiana.

It is submitted that the petitioner has been falsely implicated in this case due to some mistaken identity. Learned counsel for the petitioner points out that in the FIR, it is alleged that the petitioner, who lives in the neighbouring area had pulled the complainant's daughter to his residential room on 02.12.2015 and thereafter committed rape upon her. When medical examination of the victim was conducted on 02.12.2015 itself, the victim stated that rape was committed upon her by one Pintu in whose room the victim was sleeping along with her mother, his wife and three children at about 2.00.a.m. This is so recorded in the medico

legal report of victim attached as Annexure P-5. It is further contended that an affidavit dated 03.12.2015 was sworn by the complainant before the Executive Magistrate, Ludhiana, clearly stating that the petitioner's name has been mentioned in the FIR due to a mistake. It is further urged that there is nothing on record to indicate that the victim in this case was a minor. The victim had refused to undergo ossification test. Moreover, no injury external or internal was detected on the person of the victim at the time of her medical examination.

It is vehemently argued that the petitioner has been in custody since 03.12.2015. Neither the complainant or the victim are coming forward to depose before the learned trial Court. Petitioner undertakes to face the proceedings and not abuse the concession of bail, if afforded to him. It is thus prayed that this petition be allowed.

Learned counsel for the State while opposing the petition submits that specific allegations have been raised against the petitioner in the FIR. However, it is not denied that a different accused/name has been mentioned in the MLR (Annexure P-5) and no injury was detected upon the victim. In regard to affidavit dated 03.12.2015, no reliance can be placed on the same even though the same was admittedly furnished before the police authorities and is available on the police file.

It was brought to the notice of this Court on 26.03.2018 that the complainant and the eye witness had left from the last known address and efforts were being made to trace them out in Uttar Pradesh at their permanent address and efforts would be made to ensure their presence before the learned trial Court. It is a matter of record that the complainant and the victim have not appeared before the learned trial Court despite various opportunities.

Pursuant to specific order passed by this Court, affidavit dated 23.05.2018 of Mr. Gurpreet Singh, PPS, Assistant Commissioner of Police (West), Ludhiana, has been filed in Court today. Same is taken on record subject to just exceptions.

As per the said affidavit, HC Balwinderjit Singh, Police Station Haibowal, was sent to Uttar Pradesh on 10.04.2018, where the Sarpanch of the village informed him that the complainant rarely comes to her native village at Uttar Pradesh. It is further stated that whereabouts of the complainant or the victim could not be traced, though strenuous efforts for the same are being made.

Learned counsel for the State, on instructions from ASI Chanan Singh, Police Station, Haibowal, verifies that the petitioner is not reported to be 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 peculiar facts and circumstances of the case but without commenting upon or expressing any opinion on the merits thereof, this petition filed by Amit Kumar, is allowed. Petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned Trial Court as well as subject to the condition that the petitioner shall mark his presence on the first Saturday of each month at 11.00.a.m. at Police Station Haibowal, District Ludhiana.

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.

25.05.2018
s.khan

[LISA GILL]
Judge

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