

**In the High Court of Punjab and Haryana at Chandigarh**

**Crl. Misc. No. M-49723 of 2017**

**Date of Decision: 18.1.2018**

Gurpreet Singh

.....Petitioner

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Sarbjit Singh, Advocate  
for the petitioner.

Mr. Rajbirinder S. Chahal, Addl. A.G., Punjab.

Mr. L.M.Gulati, Advocate  
for the complainant.

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**ANITA CHAUDHRY, J (ORAL)**

The petitioner is seeking regular bail in FIR No. 56 dated 24.4.2017 registered at Police Station Kambo, District Amritsar under Sections 376 IPC.

The facts as they appear: The complainant was married to the petitioner in December 2000. A daughter was born to them. The petitioner filed a petition for divorce and *ex parte* decree of divorce was passed in 2013. The complainant has alleged that she was not aware of the divorce even till 2016 and the petitioner continued to have relations with her and had raped her.

Counsel for the petitioner submits that service upon the wife had been effected and in the divorce they have placed on record the report on the summons. Counsel further states that the application filed for setting

aside the *ex parte* decree was dismissed in default. Counsel further contends that when the complainant appeared in the witness box she has admitted her signatures on the summons. He states that petitioner is in custody since 23.10.2017 and his daughter is living with him, is studying in 9<sup>th</sup> class and his mother has Cancer and the trial would take time.

State counsel informs that challan has been presented but charge has not been framed.

On the other hand the submission on behalf of the complainant is that it is the husband who had identified Harjeet Kaur at the time of alleged service and the manner in which the report has been prepared shows that the husband and wife were together and it is therefore, the husband was present and fraud had been played. The counsel further submits that the wife was suffering from Typhoid and therefore, could not appear in the Court and her application was dismissed in default and application has been filed for restoration.

On the last date, counsel appearing for the complainant had stated that they had filed an application for restoration of the petition on 11.1.2018. The counsel was asked to produce the copy of the application and order passed thereon. Though the application is dated 11.1.2018 but the order does show that the matter was listed on 11.1.2018. The date of filing of the petition is not indicated in the order.

An *ex parte* decree of divorce has been passed in favour of the husband. The allegations are that the service was not effected in the divorce petition and the decree had been obtained by fraud. The husband is alleged to have continued to live with the wife and maintained the relations.

The *ex parte* decree of divorce has not been set aside. The

Court is yet to decide whether service was effected or not. Challan has been presented. The trial would take time.

Without commenting anything on the merits of the case and considering the circumstances of the case and the fact that the trial will take time to conclude, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing local surety and adequate bonds to the satisfaction of the trial Court/Duty Magistrate.

**(ANITA CHAUDHRY)**  
**JUDGE**

**January 18, 2018**  
**Gurpreet**

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|----------------------------------|----------|------------|
| <b>Whether speaking/reasoned</b> | <b>:</b> | <b>Yes</b> |
| <b>Whether reportable</b>        | <b>:</b> | <b>No</b>  |