

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

CRM-M-9121-2017

Date of decision:- 10.9.2018

Nishan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

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

Mr.Dhruv Dayal, Sr.DAG, Punjab.

H.S. MADAAN, J. (Oral)

This petition has been filed for the grant of regular bail to the petitioner – Nishan Singh, an accused in FIR No.207 dated 2.12.2016, under Sections 376, 506 IPC and Section 4 of POCSO Act, registered at Police Station Daba, District Ludhiana.

Briefly stated, the facts of the case as per the prosecution story are that on 2.12.2016 at about 4:00 a.m., the prosecutrix aged about 11 years and 2 months daughter of Manjinder Singh and Jaswinder Kaur @ Bholi, resident of Street No.9, Dhillon Colony, near Reru Sahib Gurudwara, PS Daba, Ludhiana went missing from her bed; that her mother noticed that the prosecutrix was lying with her maternal

grandmother Kulwant Kaur; that on being asked, the prosecutrix disclosed that Nishan Singh residing on the first floor of their house with his parents had come to her room, awakened her and by threatening her took her to bath-room in upper storey, though the prosecutrix tried to raise alarm but Nishan Singh threatened to kill her and her mother, forcibly removed her trouser(salwar) and had sexual intercourse with her; thereafter, he sent prosecutrix to go home. Initially out of shame, the matter was not reported to the police but subsequently the police was informed by Jaswinder Kaur alias Bholi, mother of the prosecutrix on 2.12.2016 and formal FIR was registered on the basis of such statement.

The accused was arrested on 4.12.2016. He had moved an application for regular bail in Court of Sessions at Ludhiana but was unsuccessful as the same was dismissed vide order dated 23.1.2017 passed by learned Additional Sessions Judge, Ludhiana, as such, he has approached this Court for grant of similar relief.

Notice of the petition was given to the State and State counsel has put in appearance.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely involved in this case and now the matter has been compromised. The parents of the prosecutrix had appeared in this Court and stated that if the petitioner marries the prosecutrix and bail is granted for that purpose, then they would have no objection. They stated that the girl is aged about 17 years.

On the other hand, learned State counsel submitted that the petitioner has committed a heinous crime of raping a minor girl and he does not deserve any concession of bail.

After hearing the rival contentions, I find that in the FIR the petitioner is specifically named and there are clear allegations of petitioner accused Nishan Singh committing rape upon the prosecutrix, aged about 11 years and 2 months. The prosecutrix getting her statement recorded during the trial as PW1 has categorically stated that accused had not committed rape upon her and had not threatened her or illegally confined her. She denied having made any statement to the police. Though she conceded having made statement under Section 164 Cr.P.C. before the Magistrate but then she stated that she had got recorded that statement under pressure of some police officials and that she had not made any statement. She denied having made any such statement before the police. She was declared a hostile witness at the instance of Public Prosecutor, who was allowed to put questions to her in the form of cross-examination, but without any fruitful result. She happens to be a star witness for the prosecution. She having resiled from the statement made by her to the police and before Magistrate under Section 164 Cr.P.C. caused dent in the prosecution story. It is stated that the petitioner/accused has agreed to marry the prosecutrix. The parents of the prosecutrix have also not opposed the petition for bail for the said reason. The trial is going on and its conclusion is likely to take some time, therefore, it shall be in the fitness of things, if regular bail is granted to the petitioner.

Accordingly, the petition is allowed. The petitioner be

admitted to bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Ludhiana, subject to the following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got one, otherwise to furnish affidavit in that regard.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

10.9.2018
Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No