

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

**CRM M-11799 of 2019
Date of Decision: March 20, 2019**

Mithu Singh

.....Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Saurav Khurana, DAG, Punjab.

FATEH DEEP SINGH, J. (Oral)

This order shall dispose off second regular bail application under Section 439 Cr.P.C. moved in FIR No. 104 dated 02.08.2017 under Sections 363/366-A, 376 IPC and Section 3, 4 of Protection of Children from Sexual Offence Act registered at Police Station City, Jalabad (W) District Fazilka, the first one having been dismissed as withdrawn for making necessary modifications.

The present case was got registered on the complaint of unmarried girl, termed to be victim aged around 15 ½ years, wherein, she alleged that she belongs to a family of labour class and was a

student of government Girl Senior Secondary School and in the vicinity of their house, the accused who too works as a labourer was residing had befriended her. She further alleges that the accused had forcibly taken her away after enticing her on the pretext of marriage but he refused to do so subsequently forcing her to return back to her house leading to the registration of the present case and arrest of the petitioner on 04.08.2017.

Shri Devinder Singh Khurana, learned counsel for the petitioner, *interalia*, contends that nowhere during the investigation any allegations of rape have come about or were established by any means much less that even medical report of DNA profile etc. do not bear out so and without passing a speaking order, the Court below had framed charges under Section 376 IPC as well. It is further contended that the petitioner is behind the bars since long time and the trial is not likely to be concluded in near future.

Mr. Saurav Khurana, DAG, Punjab assisted by ASI Chander Shekhar with all fairness concedes at bar that in the statement made by the prosecutrix there is no allegation of rape and even no medical evidence has come about for commission of offence under Section 376 IPC.

Appreciating the submissions, nowhere in the report under Section 173 Cr.P.C. there is any allegation of rape. Even the medical documents shown to the Court by the learned State counsel do

not support such a stand against the petitioner.

Without adverting on the merits of the case as well as the manner in which the the trial Court had framed charges, needs to be strongly deprecated and together with the fact that the petitioner is behind the bars since almost 1 year and 7 ½ months and the fact that the trial is not likely to be concluded in near future and culpability, if any, of the petitioner shall be determined at the trial which is not likely to be concluded in the near future. This Court is of the opinion that it is a fit case for grant of bail. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

Disposed off.

March 20, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No