

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

CRM-M-3651-2017 (O&M)

Date of Decision:-28.8.2019

Kewal Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.K.S. Phoolka, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab assisted by SI Jagir Singh

Dr. Sanjiv Kumar, Scientific Officer, Serology Division,
Forensic Science Laboratory, Punjab, Mohali.

GURVINDER SINGH GILL, J.

1. The petitioner Kewal Singh has approached this Court seeking grant of anticipatory bail in a case registered against him vide FIR No.175 dated 3.12.2016 under Section 376 IPC, Section 3 of SC & ST (Prevention of Atrocities) Act, 1989 and Section 4 of the Protection of Children from Sexual Offence Act, 2012 at Police Station Talwandi Sabo, District Bathinda.
2. The FIR was registered at the instance of Amandeep Kaur wherein it has been alleged that on 14.6.2013, the petitioner Kewal Singh of his village had met her and offered to give her a lift as she was to go to her matrimonial grandparents' house. It is alleged that the accused, however, established illicit relations with her and threatened her. The complainant was aged about 15 years at that time and she made an application to the police on 16.6.2013 regarding the incident on the basis of which a case in respect of rape

committed by Kewal Singh was registered and consequently Kewal Singh was arrested. However, the parents of Kewal Singh effected a compromise with the complainant and assured that they would get Kewal Singh married to the complainant. The complainant, being taken in by the said representation, agreed for the said compromise. After Kewal Singh was released from jail, he established link with the complainant but he kept on putting off the matter regarding their marriage on one pretext or the other. The complainant alleged that she has become pregnant on account of illicit relations with Kewal Singh but now he was not performing marriage with her.

3. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that he had never held out any promise to the complainant to marry her and that infact even as per the FIR, it is allegedly the parents of the petitioner who had held out some representation to the complainant for the marriage and not the petitioner himself who was in custody during that time. It has further been submitted that in any case there is no evidence to show that the petitioner had ever established any physical relations with the complainant and that the complainant had earlier got a false case registered against the petitioner for offence under Section 376 IPC i.e. FIR No. 140 dated 16.6.2013 registered at Police Station Civil Lines, District Bathinda in which he stands acquitted vide judgment dated 31.10.2013 passed by the Court of Additional Sessions Judge, Bathinda wherein while acquitting the accused the trial Court also ordered for initiating proceedings under Section 344 Cr.P.C. against the complainant for having furnished false evidence against the petitioner.

4. Opposing the petition, the learned State Counsel has submitted that the petitioner was acquitted in the earlier case under Section 376 IPC since a compromise had been effected due to which the complainant had resiled from her statement and that infact the petitioner had taken an undue advantage of the tender age of the complainant and had established physical relations.
5. During the course of proceedings of this bail application, certain directions had been issued by this Court to conduct DNA examination in respect of the aborted fetus. However, no definite opinion has been furnished pursuant to the DNA examination on account of insufficient sample. As per the latest affidavit i.e. affidavit dated 19.8.2019 furnished by Dr. Surinder Singh Parmar, Assistant Director (Serology), FSL, Punjab, the sample to be sufficient and proper for DNA examination should be collected in the following manner :-

“In the case of Aborted Foetus, Foetal tissue samples should be collected in sterile plastic container and stored at -20 C to establish paternity by DNA profiling.”

6. Having regard to the facts and circumstances of the case and while noticing that the petitioner stands acquitted in FIR No. 140 dated 16.6.2013 registered at Police Station Civil Lines, District Bathinda, as the complainant had resiled and also that as on date there is nothing to establish that the aborted Foetus had been conceived through the petitioner, this Court does not find the present case to be a case which would warrant custodial interrogation.

7. The petition, as such, is accepted and the interim directions issued vide order dated 19.5.2017 are made absolute subject to the condition that the petitioner shall appear and join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall abide by the conditions as provided under Section 438(2) Cr.P.C.
8. The petition stands accepted accordingly.

28.8.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No