

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-22398 of 2019 (O&M)
Date of decision : July 04, 2019

Gurshan Singh @ Vicky

....Petitioner

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Vipin Mahajan, Advocate, for the petitioner

Mr. Harbir Sandhu, Assistant Advocate General, Punjab with
ASI Balraj Singh, PS Nurmehal, District Jalandhar

Mr. HS Thiara, Advocate, for the complainant

Fateh Deep Singh, J. (Oral)

In this second regular bail application under Section 439 Cr.P.C. before this Court in case FIR No. 93 dated 6.9.2017 under Sections 363, 366-A, 376 IPC and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Nurmehal, Police District Jalandhar Rural, the allegations have been levelled by complainant mother of a girl aged around 17 years alleging that on 2.9.2017 while she and the victim were in the house and she went out to fetch milk around 10.00 AM

and on her return she saw that her daughter was missing and suspected the role of the petitioner in this elopement leading to the registration of the case and arrest of the petitioner.

Mr. Vipin Mahajan, counsel for the petitioner has contended that the girl had entered into a wedlock with the petitioner and sought protection from the Court and has sought to place reliance on documents Annexures P/4, P/5 and statement of the girl Annexure P6/T submitting that the own stand of the prosecutrix in her statement under Section 164 Cr.P.C. enumerates that she was in a relationship with the petitioner and the documents are suggestive of the same and there is nothing to establish the allegations of rape and prayed that the petitioner is behind the bars since a long time and the trial is not likely to be concluded in near future.

Mr. Harbir Sandhu, Assistant Advocate General, Punjab assisted by ASI Balraj Singh, PS Nurmehal, District Jalandhar and Mr. HS Thiara, Advocate, for the complainant, have stoutly opposed the relief on the grounds that the prosecutrix is shown to be a minor of around 17 years of age and having been enticed and taken away by the petitioner from the lawful guardianship of the parents and forced into marriage is in itself serious allegation disentitling the petitioner to any relief.

Going through the arguments as is there the girl in her statement dated 21.12.2017 under Section 164 Cr.P.C. has shown her to be then aged around 18 years and has claimed that she has entered into a

wedlock with the petitioner and has even denied the allegations of rape or undue pressure at the behest of the petitioner. The documents placed on the records corroborate the fact of this relationship being voluntary one. It is duly accepted by the learned State counsel that there is nothing suggestive on the medical records to prove the offence of rape. In such a peculiar situation and circumstance, a debatable issue arises over the very applicability of offence under Sections 363, 366-A, 376 IPC and which can only be set at rest at the trial which is not likely to be concluded in near future and the petitioner is behind the bars since a long time and thus, no purpose will be served by retaining the petitioner in jail. Accordingly, he is ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Jalandhar.

The present petition stands disposed off accordingly.

The observations made herein above shall have no bearing on the merits of the case as these are purely for the disposal of the present bail application.

July 04, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No