

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

CRM-M No.53931 of 2018 (O&M)

Date of decision: 27th May, 2019

Raju @ Raj Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. SPS Sidhu, Advocate for the petitioner.

Mr. A.S. Sandhu, Addl. Advocate General, Punjab
for the respondent/State.

Mr. Arshvir S. Sandhu, Advocate for the complainant.

FATEH DEEP SINGH, J. (ORAL)

Petitioner Raju alias Raj Kumar has come up in this first regular bail application under Section 439 Cr.P.C. in case bearing FIR No.120 dated 29.10.2018 under Sections 376, 376(D), 34 IPC pertaining to Police Station City-II, Abohar, District Fazilka got registered by complainant wife of co-accused non-applicant Sher Singh. In her complaint, the complainant alleges that the petitioner Raju alias Raj Kumar happens to be the landlord in which the couple was residing and that her husband who works as a carpenter, was alcoholic and often used to physically abuse her due to which she started living with her parents and after the couple had patched up, on 24.10.2018 while the complainant was sleeping in the tenanted premises, whereas her husband

and the present petitioner were consuming liquor and subsequently, her husband woke her up to make her agree to have physical relations with the petitioner and who forcibly thereafter violated the complainant, leading to registration of the present case and arrest of the petitioner on 31.10.2018.

Learned counsel for the petitioner Mr. SPS Sidhu, Advocate inter alia contends that the very story of the prosecution is highly unpalusible and there is nothing suggestive to show that the lady has been ravaged and even the medical evidence does not support it, and being a pure matrimonial dispute between the husband and the wife, on account of support of the petitioner towards the husband, he has been falsely implicated. It is contended that even the complainant in her stand taken at the trial, has not supported the prosecution story.

Mr. A.S. Sandhu, Additional Advocate General, Punjab on instructions from SI Davinder Singh, Police Station City-II, Abohar assisted by learned counsel for the complainant Mr. Arshvir Singh Sandhu, Advocate does not dispute the facts that have been canvassed before this Court by learned counsel for the petitioner, but has stoutly opposed the grant of relief on the grounds of heinousness of the offence and seriousness of allegations.

Going through the submissions of the two sides, the petitioner is behind the bars and it is admitted even by the State that the complainant did not support the prosecution at the trial. As has been

accepted, there is no medical evidence to support the allegations of rape and thus, a debatable issue arises over the very applicability of Section 376 IPC and that an affidavit of the complainant (Annexure P2) has come about to nullify her allegations. In view these circumstances, and the fact that the trial is not likely to conclude in the near future, this Court is of the opinion that no useful purpose will be served by keeping the petitioner in custody in the present case. Accordingly, he is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Fazilka. However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

The petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

May 27, 2019

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No