

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

**CRM M-30669 of 2019
Date of Decision: August 27, 2019**

Pankaj AggarwalPetitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

Mr. Sandeep Sharma, Advocate
for the complainant.

FATEH DEEP SINGH, J. (Oral)

Petitioner Pankaj Aggarwal, who is in custody in
case FIR No. 50 dated 02.05.2019 under Section 376 IPC,
registered at Police Station Mahilpur, District Hoshiarpur
has sought regular bail by way of this application.

The present case was got registered by father of Isha Aggarwal Ex. wife of the petitioner. In the allegations, the complainant claims that a marriage between the petitioner and Isha Aggarwal was solemnized on 04.12.2003 and out of which a girl aged around 14 years and a son aged around 09 years were born to the couple. It is alleged that the husband during the subsistence of this marriage while the wife was residing with the husband and her children in the matrimonial home deceptively managed to obtain an *ex-parte* divorce decree on 12.11.2018, to which, the wife remained inoblivion. The complainant alleges that while the husband and her daughter were living together, the accused/petitioner entered into a wedlock with one Kamlesh Kaur on 21.02.2019 and in spite of the same had been developing physical relations with the victim deceptively and, therefore, claimed that the daughter of the complainant was being raped by the petitioner leading to

the arrest of the petitioner on 02.05.2019.

Shri K.S. Dadwal, learned counsel for the complainant has sought to dispute the very applicability of allegations of rape on the grounds that the victim was fully aware of her legal status and had been offering herself to the petitioner and, thus, element of rape does not materially exist. It is contended that petitioner is behind the bars since a long time and that the present case is an outcome of vengeance and revenge against the husband who managed to obtain a decree of divorce and that the inquiry conducted by the Senior Superintendent of Police into the allegations exonerated the accused.

Mr. Harbir Sandhu, AAG, Punjab assisted by ASI Sukhwinder, Police Station Mahilpur has vehemently argued that the SSP did not accept the findings of the inquiry and that challan against the accused has already been presented in the Court.

As is argued that the husband managed to obtain by fraud an *ex-parte* decree of divorce of his marriage with the victim and under the guise had been raping the wife while carrying on amorous relations with another woman and, thus, the allegations of rape is well enshrined and in view of the heinousness of the offence, the petitioner is not entitled to any relief.

The definition of rape as detailed in Section 375 IPC, clearly states that a man who commits rape with the consent of a woman when the man knows that he is not her husband and her consent is obtained because she believes that he is to be a man, to whom, the lady is lawfully married falls within the definition of rape. The apparent prima facie allegations as is even conceded by Mr. Dadwal, learned counsel for the petitioner that the husband had managed to procure an *ex-parte* decree of divorce on 12.11.2018, though the wife had been residing in her matrimonial home

but she was not aware that the petitioner ceases to be her husband and the husband fully aware of the same has been carrying on with this defilement with the victim for more than one year certainly shakes judicial conscience. The mere fact that the petitioner has been found innocent in inquiry is a matter to be adjudicated at the trial. In the light of what has come about, this Court is not inclined to grant bail to the petitioner and the same stands dismissed.

August 27, 2019

amit rana

(FATEH DEEP SINGH)**JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No