

224.

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

CRM-M-9174-2020

Date of decision: 06.03.2020

BALJINDER SINGH

... Petitioner

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ranbir Singh Sekhon, Advocate,
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.0115 dated 05.08.2017 registered under Sections 452, 376-D of IPC (Section 376-D deleted vide rapat No.37 dated 22.01.2020 and Section 376 of IPC was added vide same rapat) at Police Station Guruhar Sahai, District Ferozepur.

Learned counsel for the petitioner states that the petitioner is in custody since 09.12.2019 (the date when he surrendered before the court). He submits that the present FIR was registered on the basis of statement of the prosecutrix-complainant wherein she has alleged that on 01.08.2017 at about 10 AM when she was present in her house and her husband had gone to pay tribute to some religious places and the other family members had gone to attend cremation ceremony of the relative, suddenly one person came to her house and caught hold of her arms from back side and threw her on the ground. The said person was Rinku son of Kala of the same village.

In the meanwhile, petitioner also came in the room and bolted the door of the room and committed rape upon her.

Learned counsel for the petitioner has argued that in fact the FIR No.114 dated 05.08.2017 under Sections 323, 341, 148, 149 of IPC, Police Station Guruharshai was registered on the statement of the petitioner against the family of the prosecutrix and it is in order to counter the said FIR, the present FIR has been registered. He states that there is nothing on record against the petitioner which establish the commission of rape. Even otherwise, the alleged incident is of 01.08.2017, whereas the present FIR was registered on 05.08.2017. The presence of spermatozoa is of no relevance when the prosecutrix is a married lady and she was taken for medical examination by none else but by her own husband.

Learned State counsel does not dispute the custody. However, he submits that though DNA report has not yet been received in the case, but since spermatozoa has been found on the person of the prosecutrix, at this stage, it is sufficient evidence so as to decline bail to the petitioner.

I have heard learned counsel for the parties.

Petitioner is in custody since 09.12.2019. There is no dispute that FIR No.114 (supra) has been registered at the behest of the petitioner as a complainant against the accused who happens to be the family members of the prosecutrix in the case. In the absence of DNA report, the argument of the learned State counsel that spermatozoa was found on the person of the prosecutrix cannot be accepted outrightly as the prosecutrix is a married lady and she was taken for medical examination by her husband on 03.08.2017.

In this manner, the presence of the husband of the prosecutrix has been

noticed on 03.08.2017. Thus, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

06.03.2020
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No