

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

CRM-M-15954-2020 (O&M)

Date of Decision:- 28.9.2020

Jujhar Singh @ Prince

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Avtar Singh Bhatti, Advocate for
Mr. Manoj Kumar Sharma, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Gagandeep Singh Simble, Advocate for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 9 dated 31.1.2018 under Section 376 IPC and Section 3 of POCSO Act at Police Station Rangar Nangal, District Batala.
2. The FIR in question was lodged at the instance of victim wherein it has been alleged that the petitioner Jujhar Singh has some relatives in the village of the complainant and he frequently used to visit that village and came to be on talking terms with the complainant and also developed friendship with her. It is alleged that the petitioner's sister namely Mandeep Kaur also used to talk to the complainant over telephone and the petitioner used to say that he wanted to marry the complainant. It is alleged that on 21.3.2016, the petitioner told her over telephone that he wants to go out with the complainant and to which the complainant agreed and the petitioner took her

on a motorcycle to a hotel near Amritsar and got a room booked for them and forcibly established physical relations with her. However, the complainant did not disclose this fact to anyone. It is alleged that subsequently, the petitioner again used to call her to the hotel and while threatening her that he would upload a video which he had made on social media, kept on establishing forcible relations with her.

3. The learned counsel for the petitioner has submitted that it is a case where the complainant-victim had voluntarily been having physical relations with the petitioner and that she was matured enough being aged about 17 ½ years and that the petitioner had also been ready and willing to marry the complainant. It has been submitted that an inquiry had also been conducted by the police wherein it was found that the petitioner and the complainant had been having physical relations amongst them and that the petitioner had promised to marry the complainant. The learned counsel has submitted that during the course of enquiry, it had been recorded that the petitioner had made a statement as regards his willingness to marry the complainant but it was the complainant who imposed unrealistic conditions on marriage and demanded a plot and one acre land to be transferred in her name. The learned counsel for the petitioner has further submitted that although the complainant is stated to have made a complaint against the petitioner somewhere on 23.10.2017 and the FIR came to be lodged on 31.1.2018 necessarily implying that the complainant and the petitioner, in any case, were not having physical relations since 23.10.2017 but it remains unexplained as to how the Chemical Examiner's report shows presence of '*Spermatozoa*' on the vaginal swab which was taken after lodging of FIR in

January, 2018. It has been submitted that the only inference which can be drawn is that the complainant perhaps was having physical relations with somebody else.

4. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that it is infact a case where the victim was aged barely 16 years at the time of alleged occurrence. It has further been submitted that since the complainant was aged less than 18 years, then her consent would virtually be immaterial as apparently she had been enticed by the petitioner by holding out false promises. The learned State counsel, upon instructions from ASI Sukhdev Singh has, however, informed that the petitioner has been behind bars since the last 6 months and is not stated to be involved in any other case.
5. I have considered rival submissions addressed before this Court.
6. Having regard to the facts and circumstances of the case it will certainly be debatable as to whether it is a case of consensual physical relations or as to whether some forcible physical relations were established or as to whether the said physical relations had been established while holding out some false promise. The presence of '*Spermatozoa*' on the vaginal swabs may not be sufficient to establish the allegations against the accused. In any case, the petitioner has been behind bars since the last more than six months and his further detention will not serve any useful purpose as challan had already been presented.
7. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

8. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

28.9.2020
kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No