

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-43531 of 2019

Date of Decision: 11.12.2020

Harbhajan Singh

...Petitioner (s)

Versus

State of Punjab

...Respondent(s)

Criminal Misc. No.M-40076 of 2019

Resham Singh @ Prem Singh

...Petitioner (s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Digvijay Nagpal, Advocate
for the petitioner(s).

Mr. Sidakmeet Singh Sandhu, A.A.G., Punjab.

Mr. PPS Duggal, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

This order shall dispose of two petitions i.e. Criminal Misc. No.M-43531 of 2019 and Criminal Misc. No.M-40076 of 2019, as the same have arisen out of common FIR and similar facts are involved in both the petitions. However, for brevity, the facts are being noticed from Criminal Misc. No.M-43531 of 2019.

Prayer in these petitions filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioners in FIR No.124 dated 04.09.2017 under Sections 363, 366, 376-D, 120-B IPC registered at Police Station Guru Harsahai, District Ferozepur.

As per the FIR, which was registered at the behest of one of the victims-complainant Santosh Rani, Major Singh s/o Shinder Singh, who used to come to their house, had made love relations with both the victims who are unmarried sisters. On 20.08.2017, when the parents of the victims had gone to Guruharsahai Mandi for taking medicines and the victims were alone in the house, accused Major Singh came to their house and took them with him on his motorcycle by giving assurance to marry them. On the way, the brother-in-law of the complainant, who was coming to meet them, saw her and started calling them. However, Major Singh accelerated his motorcycle and took them to some unknown place, where the petitioners, whose names came to be known afterwards, were standing. Major Singh left the place after dropping them there. Thereafter, the accused-petitioners took the complainant and her sister near canals, where they kept on raping them forcibly, without their consent. However, when the victims started shouting, they left them on the outskirts of the village on 23.08.2017. After coming back to their house, the victims narrated the incident to their parents, whereupon on 02.09.2017 the victims were admitted in Guru Gobind Singh Medical College, Faridkot.

Learned counsel for the petitioners has argued that the petitioner - Harbhajan Singh had love affair with the prosecutrix Kailash Rani, who was born on 17.08.1999, whereas the other co-

accused/petitioner – Resham Singh @ Prem Singh had relationship with other victim-Santosh, who was born on 05.10.1996 and thus, the victims in the case had attained the age of majority and their relationships with the petitioners were with consent. The petitioner – Harbhajan Singh is in custody since 09.08.2019 whereas the petitioner-Resham Singh @ Prem Singh is in custody since 29.01.2018. Moreover, the alleged incident had taken place on 20.08.2017 whereas the FIR in question was registered on 04.09.2017, thus, there is delay in registration of FIR. He has referred to the receipt of the hotel i.e Sharma Guest House, Mandi Dabwali, Annexure P-3, to submit that the victims had stayed with the petitioners with consent for three days and also referred to photographs attached along with Annexure P-3 in CRM-M-43531-2019 to persuade this Court that the petitioner-Harbhajan Singh and the prosecutrix-Kailash Rani were closely known to each other.

Learned State counsel does not dispute the custody of the petitioners. However, he submits that the prosecutrices are yet to be examined in the case.

On the other hand, learned counsel appearing for the complainant has opposed the bail petitions of both the petitioners on the ground that the date of birth of prosecutrix-Kailash Rani is not 17.08.1999, rather it is 16.07.2000, as per the certificate issued by the Registrar, Births and Deaths and thus, she is minor.

I have heard learned counsel for the parties.

State has filed reply by way of affidavit of Ravinder Singh, PPS, D.S.P., Sub Division, Guruharsahai, which is accompanied with a

certificate issued by Dr. Nishi Garg, Associate Professor (Obs & Gynae), wherein she has opined that the victim Kailash Rani was examined by her. She has certified that all exhibits of victim Kailash Rani, which were examined for semen and DNA, were found amplified. On examination, no semen and no male DNA was found in all the exhibits, as per the report received from FSL. Therefore, as per the findings of medico-legal report/FSL report, she has opined that these findings were neither confirmed nor refuted as far as the allegations of the victim are concerned.

The alleged incident had taken place on 20.08.2017 whereas the FIR in question was registered on 04.09.2017. The petitioner – Harbhajan Singh is in custody since 09.08.2019 whereas the petitioner-Resham Singh @ Prem Singh is in custody since 29.01.2018. Considering the fact that trial in the case is not likely to be concluded in near future due to Covid-19 pandemic, this Court deems it appropriate to release the petitioners on regular bail.

Accordingly, the present petitions are allowed and the petitioners are admitted on regular bail, subject to furnishing of their bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

A photocopy of this order be placed on the file of other connected case.

December 11, 2020
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No