

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

201

CRM-M No.1715 of 2021 (O&M)
DATE OF DECISION : 22nd JULY, 2021

Kanwar Shehnav Singh

.... **Petitioner**

Versus

State of Punjab

.... **Respondent**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate for petitioner.

Mr. Rana Harjasdeep, Deputy Advocate General, Punjab.

Mr. Atul Goyal, Advocate for the complainant.

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RAJBIR SEHRAWAT, J. (Oral)

CRM-12636-2021 & CRM-21124-2021

These are the applications for placing on record the zimni orders and MLR of the complainant (Annexures P-10 to P-12). The applications are allowed as prayed for and Annexures P-10 to P-12 are taken on record, subject to all just exceptions.

CRM-M No.1715 of 2021

The present third petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail pending trial in case FIR No.194 dated 20.08.2019 registered under Sections 308, 315, 498-A, 323 & 34 IPC at Police Station Civil Lines, District Amritsar.

It is submitted by the counsel for the petitioner that the petitioner is in custody since 20.08.2019. The prosecution has not examined any witness so far. The complainant is deliberately avoiding appearing before the trial court, as is reflected from the zimni orders (Annexures P-10 & P-11) passed by the trial court. Hence, it is submitted that there is no justification for keeping the petitioner in custody now.

The counsel for the petitioner has also canvassed the case of the petitioner on merits. While arguing the case, the learned counsel for the petitioner has submitted that the alleged occurrence of miscarriage was natural incident, which has no connection with the alleged incident of violence to the complainant by the petitioner. The FIR itself was registered after seven days of the incident. This time has been utilized in fabricating the story against the petitioner. Otherwise, there is no medical record to show that the alleged injury caused by the petitioner to the complainant was the cause of abortion. Rather, the MLR did not show any injury as such. The alleged injury No.6 was only the assertion of the complainant that she was given blow on her abdomen by the petitioner. It is further submitted that while giving the patient history, the complainant did not mention anything about hitting in the abdomen, rather, she only said that; there was pain in her abdomen for the last three days. The counsel has further submitted that the dead male fetus was found by the Gynecologist on 16.08.2019. Hence, the abortion does not have any relatable nexus with the alleged injury caused by the petitioner, even if the complainant is to be believed in her assertion. Hence the

offence under Section 315 IPC is not even prima facie shown against the petitioner.

On the other hand, the counsel for the State submits that earlier the statements could not be recorded before the Trial Court because of the prevalent Covid-19 pandemic situation. The case had to be adjourned because the physical hearing of the cases was not being undertaken. It is further submitted that now the prosecution shall make every earnest effort to complete the prosecution evidence at the earliest possible. On merits, the State counsel has submitted that there is specific medical opinion to the effect that the injury No.6 was the cause of abortion in the present case. Not only this, the second opinion was also obtained from the Medical Board, which also confirmed the initial opinion that the injury No.6 was the cause of the death of the fetus. Hence, it is submitted that the charge against the petitioner under Section 315 IPC is established much more than prima facie, at this stage. The petitioner has committed a heinous crime, therefore, he does not deserve any concession of bail.

The counsel for the complainant, while assisting the counsel for the State, has submitted that not only the injuries were caused to the complainant by the petitioner, the same also resulted in the abortion. The assertion of the complainant is shown to be correct on the face of it because on 13.08.2019 even the police was called by the complainant at her in-law's house; at the time when the petitioner had caused injuries to the complainant. The counsel for the complainant has further submitted that the incident of violence that happened to the complainant was on 13.08.2019, whereas she was taken to the hospital on 14.08.2019 on a

docket issued by the police authorities only. When she was examined at the hospital, the fetus was found to be already expelled with the cord hanging in the vagina of the complainant, which clearly shows that it was the impact of the injury caused by the petitioner, which resulted in the abortion. Qua the delay in registration of the FIR, the counsel for the complainant has submitted that the complainant remained in hospital till 19.08.2019 on account of various gynecological treatments conducted there. The moment she was discharged on 19.08.2021, she immediately lodged the FIR. Hence, the delay in the registration of the FIR is not intentional; by any means.

Before proceeding further, it deserves to be mentioned here that the similar bail applications were withdrawn by the petitioner earlier twice. This is the third bail petition. Hence, the arguing senior counsel has submitted that he has the instructions to submit that the present petition be decided on merits by noting down the arguments raised on behalf of the petitioner. Hence, the court has been called upon to write the order with some details.

After hearing counsel for the parties, this court finds that undisputedly, the complainant was pregnant at the time of the alleged incident of violence. Undisputedly, the complainant was at the house of the petitioner immediately before the incident of abortion. Not only this, the incident of violence is, prima facie, supported by the fact that even the police was called on the spot; by the complainant; to her in-laws house; to raise her complaint qua the said violence. It is thereafter that the police asked the complainant to get medically examined and then she goes to the hospital on the very next day. In the first medical

examination on 14.08.2021 only, the fetus was found to have been expelled and the cord was found to be hanging in vagina. Therefore, this, prima facie, indicates that the possibility of the abortion being the direct result of the impact of the violence committed to the complainant, could not be ruled out. Moreover, the opinion of the Doctors has duly found the abortion to be the direct result of the injury No.6, which was alleged to be a blow in the abdomen of complainant, caused by none other than the petitioner. Therefore, at this stage, this court does not have any material to show any ex-facie innocence on the part of the petitioner vis-à-vis the allegations leveled against him. Rather, the opinion and the second opinion of Medical Board goes directly against the petitioner on this aspect.

Although, the counsel for the petitioner has submitted that there is no injury No.6, as such, therefore, the same cannot be the cause of abortion or of the death of the fetus, however, the description of this injury is duly mentioned in the medical examination. Needless to say that 'injury' does not mean only a rupture or tearing-apart of any part of the body. The definition of the 'injury' is given in the IPC itself. The injury No.6, prima facie, falls within the definition of the injury; as defined under the law.

The next argument of the counsel for the petitioner is that there is unexplained delay in recording the FIR. However, even this argument is not germane to the case. This court finds, prima facie, force in the argument of the counsel for the complainant that throughout this delayed period the complainant was in the hospital and undergoing the treatment.

In view of the above, finding no merit in the present petition,
the same is dismissed.

However, nothing observed above shall be taken as
expression of opinion on merits of case during Trial.

22nd JULY, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

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