

GURJANT SINGH

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Riffi Birla, Advocate for the petitioner.

Ms. Ruchika Sabherwal, DAG Punjab.

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VIVEK PURI, J. (ORAL)

The petitioner is seeking regular bail in case bearing FIR No. 140 dated 18.12.2019 under Sections 376, 354, 506 IPC and Section 6 of Protection of Children from Sexual Offences Act (Section 376 IPC was deleted and Section 376-D, 115, 376-DA IPC added later on), registered at Police Station Sadar Abohar, District Fazilka.

Custody certificate has been placed on record.

Briefly, the FIR has been registered on the basis of the statement of the victim, aged about 16 years, alleging that on 05.11.2019 he was called by Sunil Kumar, co-accused to the house of Gora Bai. The petitioner was also standing near the house along with Sunil Kumar, co-accused. Sunil Kumar, co-accused pulled the victim inside the house, the victim had resisted and the petitioner bolted the door from outside. Sunil Kumar, co-accused committed rape and threatened the victim with death in the event she discloses the incident to anyone. Thereafter, the petitioner opened the door and tried to outrage her modesty. The victim

even made an attempt to commit suicide on account of shame.

Learned counsel for the petitioner contends that the allegations of rape have been attributed to Sunil Kumar, co-accused. The allegations against the petitioner in the FIR are to the effect that he had bolted and subsequently opened the door and outraged the modesty of the victim. In her statement under Section 164 Cr.P.C., the victim had given a different version to the effect that the petitioner had given punch blows and slapped her. The statement of the victim and other private witnesses has been recorded. The petitioner is in custody for a period of 2 years, 8 months and 19 days and is not involved in any other case. Even as per the report of chemical examiner, human semen has not been detected.

Learned State counsel has opposed the bail application on the score that there are serious allegations with regard to commission of penetrative sexual assault levelled against the co-accused upon the victim, who is aged about 16 years. The petitioner has played an active role in facilitating the commission of crime. Furthermore, he had also outraged the modesty of the victim. Out of 17, 10 witnesses have been examined.

The petitioner is in custody for a period of 2 years, 8 months and 19 days and is not involved in any other case. The allegations of commission of penetrative sexual assault have been attributed to the co-accused. The allegations against the petitioner are to the effect that he had facilitated the commission of crime by the co-accused by bolting the door from outside and subsequently, opened the same after the crime was committed. The allegations against the petitioner are also to the effect that he had committed sexual assault. Out of 17, 10 witnesses have been examined.

Learned State counsel has not disputed the fact that only the official witnesses remain to be examined. In the order passed by the learned trial Court vide which bail has been declined, it has been observed that the maternal uncle of the petitioner had attacked the father of the victim and threatened him.

On a query, learned State counsel further submits that no such incident was ever brought to the notice of the Police authorities. Moreover, the victim and private witnesses have been examined. Consequently, it cannot be said that the petitioner can be in a position to influence or win over the witnesses.

Keeping in view the period of incarceration and other circumstances, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

07.09.2022

Janki

**(VIVEK PURI)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No