

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 2152/2023 (O&M)

Date of decision: 24.07.2023.

Balwinder Singh @ Billa

.....Petitioner

Vs.

State of Punjab

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Kanwar Pahul Singh, Advocate for the petitioner.

Mr. Jashanpreet Singh, AAG Punjab

Nidhi Gupta, J.**CRM NO.27189/2023:**

Prayer in this application is to add Section 376-D IPC which was added later on, in the head note of the main petition filed u/s 439 Cr.PC by the petitioner for seeking regular bail.

It is submitted that offence under Section 376-D was added later on.

Upon notice of the application, ld. State counsel has no objection in case offence u/s 376-D is also added in the head note as well as prayer clause of the main petition.

In this view of the matter, application is allowed and Section 376-D is ordered to be added in the head note/prayer clause of the main petition.

Main Case:

Prayer in this first petition under Section 439 Cr.PC is for grant of regular bail to accused petitioner Balwinder Singh @ Billa son of Balwant Singh in case FIR No.48 dated 4.5.2022 under Sections 376, 376-D, 506, 34 IPC and Section 6 of POCSO Act, PS Bhindi Saidan, District Amritsar Rural, Amritsar.

FIR in this case was registered on the basis of statement of prosecutrix Kuljeet Kaur, which reads as under;-

"Statement of Kuljeet Kaur daughter of Roshan Singh resident of village Bhindi Nain, Police Station Bhindi Saidan, District Amritsar Rural aged about 16 years, I would like to state that I am resident of above noted address. I have one elder brother and one brother younger to me. I am illiterate girl and I am doing domestic works in the house. As per my Aadhar card my date of birth is 01.01.2006. My father is doing labour work in the village. My mother Jasbir Kaur is working as sweeper in Gurudwara Bangla Sahib, Delhi. Mukha Singh son of Harwant Singh resident of Bhindi Nain was in visiting terms to our house. About five months ago, Mukha Singh above said had committed rape upon me many times against my wishes by threatening me. Mukha Singh had threatened me that if you disclose about rape to any member of your family then I will cause loss to your family, due to fear, I did not disclose the said fact of rape to anybody. At the time, whenever Mukha Singh visited my house then his friend Balwinder Singh @ Billa son of Balwant Singh and Sukha Singh son of Harwant Singh residents of village Bhindi Nain kept on watching around the house. Today my Bhua Paramjit Kaur wife of Bagga Singh resident of Bhindi Saidan, Amritsar came at our house to meet us then at about 10.00 AM, when my Bhua went to Bathroom, then above said

Mukha Singh and his associate reached at my house. Mukha Singh has caught hold my arm and took me into the room and his associates went out from the house, I raise hue and cry and on hearing my noise my Bhua Paramjit Kaur has opened the door by pushing it then Mukha Singh has thrown my Bhua back by pushing her and ran away from there and his associates also ran away. I informed my Bhua that earlier also Mukha Singh has committed rape upon me many times and today also he has forcibly committed rape upon me. So legal action be taken against Mukha Singh son of Harwant Singh, Sukha Singh son of Harwant Singh and Balwinder Singh. I along with my Bhua Paramjit Kaur came to inform you. RTI of Kuljeet Kaur above said supported by RTI of Paramjit kaur wife of Bagga Singh resident of village Bhindi Saidan, attested by Sd/- Sneh Lata, 1/C, women Cell, PBI Team, Sub Division, Attari dated 04.05.2022”.

It is submitted by the Id. counsel for the petitioner that the only role attributed to the petitioner is that he was watching around the house of prosecutrix at the time when the main accused Mukha Singh allegedly committed wrong act with prosecutrix inside the house. It is submitted that in fact, there is long standing love affair between said Mukha Singh and prosecutrix and they want to solemnize marriage with each other, however, parents of the prosecutrix did not agree to their relationship and therefore, present FIR has been registered. It is further submitted that there is an unexplained delay of 5 months in lodging the FIR and that petitioner has been falsely implicated in this case. It is further submitted that the petitioner is in custody since 9.9.2022. Ld. Counsel further submits that the main accused- Mukha Singh, has been granted bail by this Court vide order of even date 24.7.2023.

Custody certificate dated 22.7.2023 produced by the Id. State counsel is taken on record.

Ld. State counsel opposes the prayer for grant of bail and submits that three prosecution witnesses including prosecutrix and her mother have been examined. However, learned counsel for the State admits that the prosecutrix in her statement under Section 164 Cr. PC has stated that she wanted to marry the main accused and her family members have forcibly got registered present FIR from her and that she did not want to go to her home.

After hearing ld. counsel for the parties, without commenting on the merits of the case and keeping in view the fact that trial is likely to take some time as case is at the stage of prosecution evidence, evidence of the material witnesses, including the prosecutrix as well as her mother stands recorded, petitioner is in custody since 9.9.2022 and has thus undergone 10 months and 16 days of custody is under trial, present petition is **allowed**. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

24.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No