

203.

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

**CRM-M-3383-2023**

Date of Decision: 27.01.2023

SARABJIT SINGH

.... Petitioner

Versus

STATE OF PUNJAB

.... Respondent

**CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Ashish Gupta, Advocate,  
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

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**JAISHREE THAKUR.J (Oral)**

This is 2<sup>nd</sup> petition that has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.121, dated 16.08.2018, under Sections 363, 366-A, 420, 467, 468, 471 of IPC (Section 376 IPC added lateron) and Sections 11, 12 of POCSO Act, 2012, registered at Police Station Sadar Raikot, District Ludhiana.

Learned counsel appearing on behalf of the petitioner would contend that the petitioner herein has been falsely implicated in the said FIR and Section 376 IPC has been invoked after an inordinate delay of 4 years. It is argued that the petitioner and the prosecutrix had solemnized marriage and approached this Court seeking the benefit of protection which was allowed vide order dated 17.08.2018 in CRM-M-35400-2018. In fact the prosecutrix herself had approached this Court vide CRM-M-44198-2018 stating that despite necessary orders having been passed for protection to be given, the

police was not doing so. The said petition was disposed of vide order dated 05.10.2018 with directions to the SHO, Police Station City Rajpura, District Patiala to protect the life and liberty of the petitioner-Shama, who is none other than the prosecutrix. Counsel would also rely upon the statement given by the prosecutrix under Section 164 Cr.P.C. stating that she wanted to marry the petitioner in question and had threatened to commit suicide in case he did not marry. The petitioner was allowed regular bail vide order dated 14.12.2018 passed in CRM-M-50398-2018 and after that the petitioner never misused the concession of bail. The prosecutrix stepped into the witness-box after 4 years and raised allegation of rape invoking Section 376 IPC which was later added to the FIR. The petitioner herein approached this Court seeking relief, however, was directed to surrender and approach the Court for regular bail, which stood denied. Counsel would alleged that after having been allowed regular bail and facing trial, Section 376 IPC has been added after an inordinate delay of 4 years. The medical that was conducted immediately after registration of the FIR and the recovery of the prosecutrix would not support the allegation of rape, which factor has not been taken into account by the Sessions Court while declining his prayer for regular bail and, therefore, he is entitled to the same.

On the other hand, counsel appearing on behalf of respondent-State would oppose the grant of regular bail to the petitioner by contending that the petitioner has now been nominated as an accused under Section 376 IPC and, therefore, needs to be kept in custody unless the statement of the prosecutrix stands completed.

I have heard learned counsel for the parties and have gone through the pleadings of the case.

There is a statement of the prosecutrix on the record recorded under Section 164 Cr.P.C. where she had categorically stated that she had left in the company of Sarabjit, the petitioner herein, on her own. She had approached this Court seeking protection at the hands of her parents on two separate occasions. What would convince this Court to allow the prayer for regular bail to the petitioner is that during the period when the FIR was registered invoking Sections of POCSO Act and her statement having been recorded, there was no complaint raised, either by the father of the prosecutrix or the prosecutrix herself, that she had been raped and that Section 376 IPC ought to have been added in the FIR. The medical report has not been taken into account while rejecting the bail applicaiton.

Consequently taking note of the fact that the petitioner had been on regular bail and not misused the concession of the same in any manner whatsoever, this Court deems it appropriate to allow regular bail to the petitioner.

Accordingly, the instant petition is allowed and the petitioner is directed to be released on regular bail on execution of adequate personal bond and surety bond to the satisfaction of concerned trial Court/Duty Magistrate. However, it is abundantly made clear that he will not attempt to contact that prosecutrix and influence her cross-examination in any manner whatsoever as her statement already stands recorded.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case

on the basis of available material. The observations made hereinabove are only for the purpose of allowing regular bail to the petitioner herein.

(JAISHREE THAKUR)  
JUDGE

27.01.2023  
sanjeev

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