

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 41289/2022 (O&M)

Date of decision: 24.07.2023.

Mukha Singh

.....Petitioner

Vs.

State of Punjab

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.V.K. Kaushal, Advocate for the petitioner.

Mr. Jashanpreet Singh, AAG Punjab

Nidhi Gupta, J.CRM NO.26900/2023 -

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

It is submitted that offence under Section 376-D was added later on vide GD No.22 dated 1.7.2022 and inadvertently Section 376-D IPC could not be mentioned in the head note as well as prayer clause of the main petition.

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 Mukha Singh son of Harwant Singh in case FIR No.48 dated 4.5.2022 under Sections 376, 376-D, 506, 34 IPC and Section 6 of POCSO Act, registered at 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 ld. counsel for the petitioner that at the time of alleged offence victim was 16-1/2 years whereas petitioner was 21 years old. It is submitted that in fact, there is long standing love affair between the petitioner and the prosecutrix and they wanted to solemnize marriage with each other, however, parents of the prosecutrix did not agree to their relationship and therefore, present FIR has been registered. Ld. Counsel submits that the petitioner wants to marry prosecutrix after he is released and that petitioner has been falsely implicated in this case. Ld. counsel refers to the status report filed on behalf of the State, by way of affidavit of Parvesh Chopra, PPS, DSP, Sub-Division, Attari, Amritsar (Rural). Relevant para 5 of the said status report dated 12.4.2023 reads as under:-

“5. That on 05.05.2022, the statement of the prosecutrix was recorded by learned Area Judicial Magistrate, Sub-division Ajnala, Amritsar under section 164 Cr.P.C, wherein she had stated that she wanted to solemnize marriage with the petitioner and her family members have forcibly got registered the present case from her against him and she did not want to go to her home”.

Ld. counsel for the petitioner further submits that even otherwise, there is an unexplained delay of 5 months in lodging the FIR. Ld. Counsel further states that the petitioner is in custody since 27.5.2022.

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

Ld. State counsel opposes the prayer for grant of bail and submits that only three prosecution witnesses have been examined so far. However, it is admitted that the prosecutrix and her mother have been examined. Ld. State counsel is further unable to deny that in the status report filed on behalf of the State, it has been admitted that on 5.5.2022 statement of the prosecutrix was recorded under Section 164 Cr.PC wherein she has stated that she wanted to solemnize marriage with the petitioner and her family members have forcibly got registered FIR from her against the petitioner 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 material witnesses, including the prosecutrix as well as her mother stands

recorded, petitioner is in custody since 27.5.2022 and has thus, undergone custody of 1 year 1 month and 26 days, 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