

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-44116-2022 (O & M)****Date of decision: 09.02.2023**

Gurmail Singh alias Ghoga

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pardhuman Garg, Advocate, for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.0116 dated 25.05.2022 under Section 377 IPC at Police Station Lambi, District Sri Muktsar Sahib.

2. The present FIR came to be registered at the instance of Happy Singh son of Bhola Singh, who stated that on 24.05.2022 around 2.00 p.m., while he was standing in the streets near the house, then Gurmail Singh @ Ghoga (petitioner), who was handicapped person, came to him (complainant) lured him (complainant) stating that he (petitioner) would give money to him (complainant) for a massage. Prior to this occurrence also, the petitioner had lured him (complainant) with money. He (petitioner) took him (complainant) to some bushes where after being massaged by him (complainant), the petitioner committed an unnatural offence against him (complainant). This occurrence had taken place earlier as well. He (complainant) had not disclosed this fact fearing disgrace and shame.

3. The learned counsel for the petitioner contends that he has been falsely implicated due to political rivalry. In fact, the petitioner is a handicapped person. There was no medical evidence inculcating the petitioner. The complainant had not given any prior complaint to the police officials for earlier occurrences and at this stage, false allegations have been levelled against the petitioner to extort money from him. As the petitioner was in custody since 25.05.2022 and none of the 15 prosecution witnesses had been examined so far, the further incarceration of the petitioner was not required, moreso, when he was a first-time offender.

4. The learned counsel for the State, on the other hand, has filed a reply by way of affidavit of Balkar Singh, PPS, Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib, dated 19.01.2023. As per the said reply, the medical examination of the petitioner and the victim took place. The blood samples of both i.e. the victim and the accused have been sent to FSL, Mohali. The learned State counsel while referring to the reply contends that the seriousness of the allegations did not entitle the petitioner to the grant of bail, moreso, when it appears that the complainant is not of sound mental state.

5. I have heard the learned counsel for the parties.

6. Admittedly, a similar occurrence had taken place earlier as well. In this situation, the veracity of the prosecution case shall be established during the course of Trial. The petitioner is in custody since 25.05.2022. The investigation stands completed and none of the 15 prosecution witnesses have been examined so far. He is also a first-time offender. Therefore, his further incarceration is not required.

7. In view of the above, without commenting upon the merits of

Singh alias Ghoga, is ordered to be released on bail to the satisfaction of the
Trial Court/Duty Magistrate concerned.

(JASJIT SINGH BEDI)
JUDGE

February 09, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No