

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 47900/2022

Date of decision: 18.07.2023.

Balwinder Singh @ Binda

.....Petitioner.

Vs.

State of Punjab

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms.Sukhpreet Kaur, Advocate for the petitioner.

Mr. Pankaj Khullar, AAG Punjab.

Nidhi Gupta, J.

Petitioner-Balwinder Singh @ Binda in his first application under Section 439 Cr.PC prays for grant of regular bail in case FIR No.0115 dated 19.7.2019 under Section 420 IPC (later on charged u/s 376 IPC, and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act,1989)), PS Aadmpur, District Jalandhar Rural.

As per allegations contained in the FIR, in the year 2009-10 accused Balwinder Singh @ Binda (who was aged 31 years at the time), met the complainant (who was aged 15 years at the time), and both of them became friends. Accused Balwinder Singh @ Binda called the complainant in Haveli on the pretext of marriage and after administering an intoxicated glass of water, committed rape upon complainant forcibly who was minor. Thereafter, accused Balwinder Singh @ Binda continuously used to rape the complainant.

Consequently, complainant became pregnant, however, accused used to get the complainant aborted.

In the year 2014, complainant got married with Bhupinder Singh, but accused Balwinder Singh @ Binda used to threaten that he will disclose his relations with her on the basis of photographs in his mobile phone. Out of fear, complainant got divorced from Bhupinder Singh through Panchayat. Thereafter, accused Balwinder Singh @ Binda again used to make physical relations with complainant. Accused Balwinder Singh @ Binda disclosed their affairs to the parents of complainant, and also extorted money from complainant.

It is further alleged in the FIR that the complainant again became pregnant in June/July 2018, and she intended to give birth to the child but accused Balwinder Singh @ Binda started threatening the complainant. Due to this tension, complainant consumed poisonous tablets on 07.07.2018. Consequently, the fetus died in womb. Thereafter, Balwinder Singh @ Binda played with the life of complainant in connivance with his mother Kulwinder Kaur on the pretext of marriage, but later on they refused to get married as they said that they are not going to marry accused Balwinder Singh @ Binda with the daughter of "Chamaars" since they are "Jats".

It is inter alia submitted by the Id. counsel for the petitioner that the prosecutrix was stated to be about 15 years in the year 2009–2010 at the time of alleged incident. It is submitted that there is no specific date mentioned in the FIR, however, a general allegation has been made that the petitioner firstly raped the prosecutrix/complainant in the year 2009-2010. Thereafter, though it has been alleged that repeated offenses were committed by the petitioner in the intervening years, yet, FIR has been registered after 9 years only on 19.7.2019. Ld. counsel submits that in the interregnum victim/complainant also married one Bhupinder Singh and in the FIR it has

been admitted that while married to said Bhupinder Singh she had undergone an abortion in the year 2018. Ld. counsel submits that clearly therefore, the allegations contained in the FIR are malicious and false.

Ld. counsel further contends that there are no photographs, no video placed on record by the complainant to substantiate her allegation that the petitioner was threatening to expose her by revealing their compromising photographs. Victim has not even got her statement recorded under Section 164 Cr.PC. It is stated that initially FIR was registered under Section 420 IPC, however, vide order dated 29.8.2022 (Annexure P-2), charges have been framed under Section 376 IPC and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that there is even no MLR on record to prove the alleged abortion(s) undergone by the victim at the behest of the petitioner. Ld. counsel states that it is allegation of the victim that she had taken Panchayati divorce from her husband Bhupinder Singh because of the pressure exerted on her by the petitioner, however, even till date the victim is legally wedded wife of said Bhupinder Singh.

Custody certificate dated 17.7.2023, produced by the ld. State counsel is taken on record.

Ld. State counsel opposes the prayer of the petitioner for grant of regular bail and submits that serious allegations have been made against him in the FIR. However, ld. State Counsel is unable to dispute the above said facts and has not produced any medical record or other evidence to show that the petitioner was blackmailing the victim by threatening to expose her compromising video(s). Ld. State counsel further submits that out of 7 witnesses so far only 2 have been examined.

I have heard the ld. counsel for the parties.

Perusal of the custody certificate reveals that the petitioner has undergone total custody of 1 year 7 months and 20 days as undertrial. Thus, keeping in view the totality of facts and circumstances, and without commenting on the merits of the case, and further keeping in view the fact that petitioner is in custody since 29.11.2021, and that the trial is likely to take some time to conclude, the present petition is **allowed**. The petitioner is ordered to be released on regular bail on his furnishing bail bonds/ surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

However, nothing stated above shall be taken as an expression of opinion on the merits of the case.

18.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No