

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-40345-2022 (O&M)
Date of decision: 19.03.2024

Bhinda Shah @ Palwinder Singh and another **...Petitioners**

Versus

State of Punjab **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. J. S. Dhaliwal, Advocate
for the petitioners.

Mr. P. S. Bhandari, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioners under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 188 dated 24.06.2021, registered under Sections 376-D, 506, 120-B of IPC and Section 6 of the POCSO Act, 2012 (Section 376-D IPC has been deleted and Section 376 IPC has been added later on) at Police Station Kamboj, District Amritsar (Rural).
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of statement recorded by the victim No. 1 'J' (*name withheld*) on 24.06.2021 alleging therein that she had seven siblings and she along with her family members previously used to live in the *Haveli* of the present petitioners on rental basis. She alleged that about 6-7 months back, when all her family

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members had gone for work and she was alone in the house, petitioner No. 2 Simarjit @ Shimbhu entered inside her room and forcibly committed rape upon her while extending threat to face dire consequences if she disclosed about the incident to anyone. He committed the same act again. Some days thereafter, he even brought two other persons along with him when she was alone, all of them had ravished her forcibly. When she was unable to tolerate all this, she disclosed everything to her parents and when her parents went to the house of the petitioners to complain then instead of understanding, the whole family started arguing with her parents and by giving beatings to them, all of them were turned out of their Haveli. She disclosed that thereafter, victim No. 2 'S' (*name withheld*), who is her married sister, also disclosed that the petitioner No. 1 Bhinda Shah @ Palwinder Singh, who is brother of accused Simarjit Singh @ Shimbhu, had also committed rape upon her previously and it was out of shame and due to their poverty that she could not disclose this fact to anyone. After registration of FIR, investigation proceedings were initiated. The victim No. 1 was medically examined, whereas the victim No. 2 refused to get her medical examination conducted. Their statements under Section 164 Cr.P.C. were recorded. The petitioners were arrested on 28.06.2022. They were also medically examined. The victim No. 1 was found to be 14 years old as on the date of filing of the complaint. During the course of investigation, offence under Section 376-D of IPC was deleted and offence under Section 6 of the POCSO Act was inserted. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in the Court and presently, the petitioners are facing trial for commission of aforementioned offences.

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3. It is submitted in the petition, which has been jointly filed by the petitioners, and it is argued by their counsel that they have been falsely implicated in this case. In fact, the family of the victims was living in their house as tenant and had not been making payment of rent since long and when the father of the petitioners had turned them out of their property forcibly, then the family of the victims had threatened to involve them in false cases and by using the victims as a tool, this FIR was lodged against them after a gap of six months. It is submitted that there is no medical evidence on record to connect the petitioners with the subject offences. The victim No. 2 had even refused to get her medical examination conducted. The petitioners are in custody since long. The victims and other material witnesses have not been examined so far. Even non-bailable warrants have been issued against them but the prosecution has failed to secure their presence. There are chances of further delay in conclusion of trial. The period of their custody coupled with the delay in lodging of the FIR and non-availability of any forensic evidence to connect them with the subject crime, is a reasonable ground to extend benefit of bail to them. Therefore, it is argued that the petition deserves to be allowed and the petitioners deserve to be released on bail.

4. *Per contra*, learned State counsel, in terms of the pleas as taken in the status report, has argued that there are serious allegations against the petitioners. The trial Court is making its utmost efforts to secure the presence of the victims. The period of incarceration alone is not a ground to extend benefit of bail to the petitioners. The petitioner No. 2 had ravished the victim No. 1, who was a child of tender age of 14 years only at the relevant time. The

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victim No. 2 had been ravished by petitioner No. 1, when she was married and pregnant and her life has also been spoiled due to the act and conduct of petitioner No. 1. Therefore, it is argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

6. As per the allegations, the petitioner No. 2 had ravished the victim No. 1, who was a 14 years' old girl, 6-7 months before 24.06.2021, whereas the victim No. 2, who was married, was also ravished by petitioner No. 1. Admittedly, the family of the victims had been residing in the property of the petitioners as tenants. As such, the petitioners were having a dominating position over them. It is *prima facie* apparent that the family of the victims is quite poor and as per own version of the petitioners, they were thrown out of their *Haveli* due to non-payment of the rent. Meaning thereby, even if the version of the petitioners is believed, then it is to be taken that they were so poor that they were not even able to make the payment of rent. The petitioners were obviously in a position to dominate the will of the victims, who belong to a very poor family. Their statements are yet to be recorded. It is the lapse on the part of the police authorities that they have not been able to secure their presence for the purpose of recording their statements in the Court. However, benefit of this fact cannot be given to the petitioners against whom serious and specific allegations have been made. Keeping in view the discussion as made above, I am not inclined to grant of bail to the petitioners and, therefore, the petition is dismissed.

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7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.
8. However, a direction is given to learned trial Court to expedite the trial of the case and to ensure appearance of the material witnesses in the Court even by taking strict steps and by giving direction to the Senior Superintendent of Police, concerned to ensure their presence in the Court, so that the trial is not delayed any further.
9. A copy of this order be immediately sent to trial Court.

19.03.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>