

# Law Today Live Doc. Id. 15558

**PUNJAB AND HARYANA HIGH COURT**

**Before: Fateh Deep Singh, JJ.**

CRM No. M-19982 of 2020 (O&M)

Decided on: 30.10.2020

Gurwinder Singh

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. Prateek Pandit, Advocate, for the petitioner

Mr. Jagmohan Ghuman, DAG Punjab

**Indian Penal Code, 1860 (45 of 1860), Section 363, 366-A, 376 – Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 3, 4 – Code of Criminal Procedure, 1973 (2 of 1974), Section 439 – Crime against child – Rape case – Regular bail -- Girl in question is presently residing at the house of the petitioner coupled with her duly sworn affidavit and which could not be displaced by the State -- Thus, a debatable issue arises over the applicability of offences u/s 363, 366-A, 376 IPC and Sections 3, 4 of POCSO Act -- Accordingly, the petitioner ordered to be released on regular bail.**

**(Para 7)**

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**FATEH DEEP SINGH, J. (ORAL) –**

1. The matter has been taken up through Video-conferencing on account of outbreak of pandemic COVID-19.

2. In compliance with orders dated 22.9.2020, counsel for the petitioner has placed on record original affidavit of the prosecutrix.

3. Petitioner Gurwinder Singh has come up in this second regular bail application under Section 439 Cr.P.C. (the first one having been dismissed as withdrawn vide orders dated 29.11.2019) in case FIR No. 51 dated 19.5.2018, under Sections 363, 366-A, 376 IPC and Sections 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (Offences under Section 376 IPC and Sections 3, 4 of POCSO Act added later on), PS Sadar, Kapurthala.

4. The present case was got registered on the complaint of Maan Singh father of a girl in question alleging that during the intervening night of 17.5.2018 and 18.5.2018 found both his daughters missing from home and suspected that since these girls were in touch with the present petitioner and Harpreet Singh and they might have enticed and taken away being minor girls.

5. Learned counsel for the petitioner inter-alia contends that the petitioner is behind the bars for more than two years and four months and in fact the girl has entered into a wedlock with the petitioner and for which reliance has been placed on the sworn affidavit of the girl placed on the record.

6. The learned State counsel does not displace the factual scenario but has strongly opposed the grant of bail on the grounds that the trial is underway and that if allowed bail, the petitioner might influence the trial.

7. Appreciating the submissions, the State counsel does not displace that the girl in question is presently residing at the house of the petitioner coupled with her duly sworn affidavit and which could not be displaced by the State. Thus, a debatable issue arises over the applicability of offences under Sections 363, 366-A, 376 IPC and Sections 3, 4 of POCSO Act. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, concerned.

8. The present petition stands disposed off accordingly.

9. The observations made herein above shall have no bearing on the merits of the case as these are purely for the disposal of the present bail application.

**Petition allowed.**

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