

CRM-M-26082-2017;
CRM-M-29221-2017; and
CRM-M-7393-2018

-:1:-

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

1. CRM-M-26082-2017
Gurpreet Singh @ Gora and another
..... Petitioners

Versus

State of Punjab
..... Respondent

2. CRM-M-29221-2017
Kulwant Singh and another
..... Petitioners

Versus

State of Punjab
..... Respondent

3. CRM-M-7393-2018(O&M)
Kajal
..... Petitioner

Versus

State of Punjab
..... Respondent

Date of decision :-18.7.2018

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.D.S. Pheruman, Advocate
for the petitioner(s) in CRM-M-26082-2017 &
CRM-M-29221-2017.

Mr.Rahul Bhargwa, Advocate
for the petitioner in CRM-M-7393-2018.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

Vide this order, I shall dispose of three petitions i.e. CRM-M-26082-2017, CRM-M-29221-2017 and CRM-M-7393-2018.

CRM-M-26082-2017 has been filed by petitioners Gurpreet Singh @ Gora and Radha and CRM-M-29221-2017 has been filed by petitioners Kulwant Singh and Anoop Singh @ Anooa, all of them being accused in FIR No.57 dated 28.3.2017, under Sections 376/376(D), 120-B IPC, registered with Police Station “C” Division, Amritsar for grant of pre-arrest bail.

Whereas CRM-M-7393-2018 has been filed by petitioner – Kajal for issuance of appropriate and necessary directions to respondents No.2 and 3 to protect/safeguard her life and not to be harassed and kidnapped/abducted by respondents No.4 and 5 and for a further direction to respondents No.2 and 3 to take appropriate legal action against respondents No.4 and 5

Briefly stated, the facts of the case are that the FIR was registered on the basis of a written complaint submitted by complainant Kajal wife of Arun Kumar @ Sonu, resident of House No.964, Street No.5, Kabir Nagar Tungbala, Majithala Road, Amritsar addressed to Commissioner of Police, Amritsar seeking taking of action against Anoop Singh @ Anooa, Manpreet Singh @ Manu, Gurpreet Singh @ Gora sons of Kulwant Singh for giving allurements to her, kidnapping her, keeping her at various places, subjecting her to rape and their parents i.e. mother Manjit

Kaur and father Kulwant Singh as well as Radha daughter of Hira Lal for helping them in doing so.

Inter alia, in the application, the complainant submitted that she was married with Arun Kumar @ Sonu about four years previously; that in June, 2016, she had some quarrel with her husband, as such, she left her matrimonial home in anger and went to Dera Beas for doing free service there; that her husband Sonu came there and took her back to the matrimonial home; that then they went to the house of her eldest sister Preeti, where her parents, family members of her sister, Krishna, mother-in-law of complainant Anoop Singh @ Anooa and one Puneet were there; that they tried to settle the dispute between the complainant and her husband but to no effect; that it was decided that the spouses would reside separately for some time; that on 25.6.2016 while the complainant was at her parental house, then Anoop Singh @ Anooa made a telephonic call to her asking her to come near Gurudwara Shaheedan all alone since he wanted to introduce her to somebody; that the complainant was reluctant but she could not resist pressure by Anoop Singh @ Anooa and went to the place near Gurudwara Shaheedan at Chattiwind Gate, where Anoop Singh @ Anooa was already there; that he allured away the complainant by stating that he would get her married with his younger brother Manpreet @ Manu; that Anoop Singh @ Anooa took the complainant to the house of her acquaintance Radha daughter of Hira Lal, who claimed herself to be wife of Gurpreet Singh @ Gora; that Gurpreet Singh @ Gora and Manpreet Singh @ Monu committed rape upon the complainant there, which was with

abetment of Radha; that they kept her there; that after a few days Manpreet Singh @ Monu and Anoop Singh @ Anoop took the complainant to Zirakpur in a bus and kept her in a house; that they used to have sex with her forcibly there; that in the month of October Radha and Gurpreet Singh @ Gora also came there and they rented a room and thereafter returned to Amritsar; that on 1.12.2016 at 2:00 a.m. midnight Manpreet Singh @ Manu came to their room and asked the complainant to get ready since the room was to be vacated on the next day in the morning; that when in the morning, she was clearing the accounts of shopkeeper having a shop on the ground floor, then a couple came there and stated that they were residing in the upper floor and inquired about the two boys stating that they had snatched Rs.30,000/- from them. According to the complainant, while they were returning to Amritsar, on the way she inquired from Manpreet Singh and then he disclosed that he and his brother had done the snatching and for that reason, they had vacated the room; that the complainant was terrified; that on reaching Amritsar, she was kept in a room in a colony Kot Mit Singh, which had been taken on rent by mother of Manpreet Singh, namely Manjit Kaur earlier; that Manjit Kaur, her husband Kulwant Singh, Radha and Gurpreet Singh @ Gora used to visit the room daily, where Manpreet Singh continued to commit rape upon her; that the said room was vacated and another room was taken nearby, where the same state of affair continued. The complainant further contended that one day Manpreet Singh took her to his parental house at Chhattiwind where his parents i.e. mother Manjit Kaur, father Kulwant Singh, brother – Gurpreet Singh @ Gora and Radha were

present; that on 1.2.2017, Manpreet Singh again took her to Zirakpur and left her in a house of one Manpreet Kaur saying that she was acquainted with him and he left that place; that he did not return for ten days. According to the complainants, he requested Manpreet Kaur that she be allowed to contact her parents on telephone and gave phone number of her mother-in-law, who contacted her; that she informed her husband Arun Kumar @ Sonu telephonically requesting him to take her away from that place and accordingly, her husband Arun Kumar @ Sonu came there on 11.2.2017 and brought her back to Amritsar. According to the complainant, all the culprits are dangerous persons indulging in crime of snatching, theft, dacoities besides drug peddling and they have constituted a gang and might have spoiled lives of several girls. She was terrified of them and as such, she could not report the matter to the police earlier. She sought taking of action against those culprits. After registration of formal FIR, the matter was investigated.

Apprehending their arrest in this case, petitioners/accused Gurpreet Singh @ Gora, Radha, Kulwant Singh and Anoop Singh @ Anooa had approached the Court of Sessions seeking grant of pre-arrest bail but their such applications were dismissed by the Court of learned Additional Sessions Judge, Amritsar vide orders dated 5.7.2017 and 20.7.2017, respectively. As such, they have approached this Court asking similar relief and filed CRM-M-26082-2017 and CRM-M-29221-2017, notices of which have been issued to respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners in CRM-M-26082-2017 and CRM-M-29221-2017 have contended that the prosecutrix had been residing with Manpreet Singh of her own sweet will and no conspiracy as alleged was entered into by the remaining accused along with Manpreet Singh and as a matter of fact all of them are innocent and have been falsely involved in this case; that they are ready and willing to join the investigation; that during the course of inquiry by the police, the petitioners had been given a clean chit.

On the other hand, learned State counsel has contended that the allegations against the petitioners are very serious and grave as such and their custodial interrogation is necessary to find out the complete factual position.

As far as petitioner Anoop Singh @ Anooa is concerned, the allegations against him are that he had asked the prosecutrix to come near Gurudwara Shaheedan from where he took her on the pretext of getting her married with his brother Manpreet Singh and took her to house of Radha, who was married with Gurpreet Singh @ Gora. As per the allegations, Gurpreet Singh @ Gora and Manpreet Singh had raped the prosecutrix with knowledge and abetment of Radha. Then Manpreet Singh and Anoop Singh @ Anooa had taken her to a place at Zirakpur and left her there and that Manpreet Singh used to have sexual intercourse with her quite often. As per the prosecution story Radha being wife of Gurpreet Singh @ Gora had

helped her husband in raping the prosecutrix. It is a case of gang rape.

As far as petitioner Kulwant Singh is concerned, there are allegations of his aiding and providing help in commission of rape upon the prosecutrix. It is a matter of trial as to whether the prosecutrix being major had agreed to get married with Manpreet Singh at the asking of his brother Anoop Singh @ Anupa but then at this stage it cannot be presumed that the complainant was a consenting party and the petitioners accused cannot take advantage of this fact presently.

Another plea of learned counsel for the petitioners has been that Gurpreet Singh @ Gora was in custody in FIR No.3 dated 3.1.2014 under Section 21 of NDPS Act, as such, he could not have possibly committed rape upon the prosecutrix. Copy of order dated 13.7.2016 passed by a Coordinate Bench of this Court in CRM-M-21104-2016 has been referred to. But then as per the contents of the FIR, the prosecutrix had been abducted on 25.6.2016 and had been recovered on 11.2.2017. Petitioner Gurpreet Singh @ Gora may be able to take plea of alibi during the trial but since he has been specifically named in the FIR and serious allegations had been levelled against him, his custodial interrogation is a must for effective investigation.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

It is well settled that custodial interrogation is more elicitation

CRM-M-26082-2017;
CRM-M-29221-2017; and
CRM-M-7393-2018

--8--

oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioners is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus, **CRM-M-26082-2017** filed by petitioners Gurpreet Singh @ Gora and Radha and **CRM-M-29221-2017** filed by petitioners Kulwant Singh and Anoop Singh @ Anooa stand dismissed.

As far as **CRM-M-7393-2018** is concerned, petitioner – Kajal has sought issuance of directions to State of Punjab, Commissioner of Police, District Amritsar and SHO/Incharge, Police Station C-Division, Amritsar (respondents No.1 to 3) to protect/safeguard her life and further a direction that petitioner be not harassed and wronged against by respondents No.4 and 5.

CRM-M-7393-2018 is accordingly disposed of directing Commissioner of Police, District Amritsar to ensure that no physical harm is caused to petitioner – Kajal at the hands of private respondents No.4 and 5 and she is not harassed by them.

(H.S. MADAAN)
JUDGE

18.7.2018
Brij

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**