

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

CRM-M-4079-2020

Date of decision:-27.8.2020

Sukhdev Lal @ Bitta

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.A.P. Kaushal, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Sukhdev Lal @ Bitta, aged 44 years, an accused in FIR No.172 dated 10.12.2019 for the offences under Sections 376/354-A IPC, registered with Police Station Mahilpur, District Hoshiarpur.

Briefly stated, the facts of the case as per the prosecution story are that, FIR in this case was registered on the basis of written complaint submitted by complainant (name not being mentioned to conceal her identity and referred to as '*the complainant/the victim*') resident of Mahilpur, District Hoshiarpur, a student of 10+2 class at Government senior Secondary School (Girls), Mahilpur, District Hoshiarpur. Inter alia, in the complaint submitted by the complainant

addressed to SSP, Hoshiarpur against Sukhdev Lal @ Bitta (present petitioner), his wife Sita, the complainant stated that she used to take tuition from Sita wife of the petitioner and her husband, the petitioner used to make obscene gestures towards her and even touched her body parts; when the complainant objected, he would express regrets promising not to do so in future but he continued indulging in those acts. The complainant informed wife of petitioner, namely Sita in that regard but she asked the complainant that she would talk with her husband and complainant should not disclose anything to anybody. On 20.3.2019 while the complainant was alone at her house, then accused Sukhdev Lal @ Bitta having his house in the neighbourhood of house of complainant forcibly entered the house of the complainant and caught hold of her. When the complainant resisted, he tried to strangle her and thereafter removed her clothes and had forcible sexual intercourse with her threatening that in case, she disclosed anything to anybody, then he would kill her and her family members. Thereafter, the petitioner had left. The complainant did not disclosed the incident to anybody out of fear. The petitioner/accused repeated acts many a times. The complainant had informed the wife of the petitioner but to no effect. On 29.3.2019 Sita wife of the petitioner called the complainant to her house stating that she would confront the petitioner in front of the complainant. When the complainant went to the house of accused, they asked her to sit besides them in a room. While the complainant was explaining the incident, the petitioner Sukhdev Lal @ Bitta again caught hold of the complainant in front of his wife Sita. Sita forcibly removed Salwar of the complainant,

whereas Sukhdev Lal @ Bitta removed her shirt. Then on instigation of Sita, Sukhdev Lal @ Bitta committed rape upon the complainant. Sita prepared a video of such acts and clicked photographs. Thereafter, she slapped the complainant and threatened her. The complainant went home and informed her father. Her parents left her in Ludhiana in the house of her maternal aunt. The accused kept threatening the family members of the complainant. The complainant returned home after some time. Ultimately, the police was informed by submitting the complaint in question. On the basis of such complaint, formal FIR was registered.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Additional Sessions Judge, Hoshiarpur vide order dated 19.12.2019. As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition is given to respondent – State. Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab has put in appearance on behalf of respondent – State and accepts notice on behalf of respondent – State.

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

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.

The allegations against the petitioner are very grave and

serious of molesting the complainant for a long time and then committing rape upon her several times and on one occasion getting such acts of forcible sexual intercourse photographed by his wife. The gravity and seriousness of allegations of raping a young girl do not warrant grant of concession of pre-arrest bail to the petitioner.

Though learned counsel for the petitionenr has contended that there is delay of about 7 months in approaching the police and reporting the matter, which puts a doubt on truthfulness of case of the prosecution and further on the day of the incident, the petitioner was on his duty at State Bank of India, Branch Mahilpur, District Hoshiarpur, where he is working as a Daftri and a wrong case has been planted upon him. But such type of pleas are not much relevant while deciding a petition for grant of pre-arrest bail. Such grounds may have some merit and significance while determining the guilt of the accused during the trial but not in the present case to find entitlement of petitioner for grant of pre-arrest bail. Nevertheless, it may be observed that the complainant comes out to be belonging to a poor and orthodox section of society where a young unmarried girl being subjected to sexual assault by a person is taken as some sort of stigma on the girl and her family. It requires a lot of moral courage to disclose the unfortunate incident and informed the police in that regard. Therefore, delay in such type of cases is not given much weightage. However, that question is to be seen and decided by the trial Court on the basis of evidence available and other facts and circumstances.

With regard to the second contention that petitioner was on

duty at State Bank of India, Branch Mahilpur, District Hoshiarpur, no document in that regard has been attached. In any case, the petitioner may lead evidence with regard to plea of alibi before the trial Court. Nevertheless the petitioner has been unable to show it at this stage.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation and to effect the recovery of money and documents. In case custodial interrogation of the petitioner 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 finding no merit in the petition, the same stands dismissed.

27.8.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No