

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

**CRM-M-18123-2019
Date of decision: 09.01.2020**

Gian Ishwar

...Petitioner

Versus

Central Bureau of Investigation, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Dr. Anmol Rattan Sidhu, Sr. Advocate
Ms. Avneet K. Brar, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate &
Mr. Anubhav Tyagi, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. RCCHG0512018S0003 dated 15.06.2018, registered under Section 22 of the NDPS Act, 1985 (Sections 193, 195, 211, 218, 120-B, 354-A, 376, 506 of the IPC and Sections 7, 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 were added later on) at Police Station CBI, SCB, CHG, Chandigarh.

Learned senior counsel for the petitioner has argued that the petitioner, being Investigating Officer in FIR No. 160 dated 12.08.2017, registered under Section 22 of the NDPS Act at Police Station Maqsudan, District Jalandhar, had apprehended Dalip Singh, husband of the prosecutrix/victim in the present case.

Learned senior counsel for the petitioner has further submitted

that said Dalip Singh was thereafter produced before the Illaqua Magistrate, whereas his remand was taken and the *challan* against him was presented on 22.09.2017.

Learned senior counsel for the petitioner has further submitted that till the time, the investigation was carried out by the petitioner/police of PS-Maqsudan, no complaint was lodged by the prosecutrix/victim regarding allegations of rape.

Learned senior counsel for the petitioner has referred to Annexure P-5 (*Colly.*), submitted by the prosecutrix/victim for the first time on 12.08.2017 to the effect that at about 6.00 AM, the petitioner has arrested her husband from her house on the allegations that he is indulged in selling drugs and later on, when she went to meet him, the petitioner demanded money from her, to which, she agreed to pay Rs. 1.5 Lakh and made a request to petitioner not to register any case against her husband. It is further stated in the said complaint that later on, on 13.09.2017, at about 3.00 PM, the petitioner/ASI came to her house when she was alone and he threatened her and committed rape upon her. It is further stated that an amount of Rs. 50,000/- was also paid to the petitioner as illegal gratification.

Learned senior counsel for the petitioner has further submitted that when the bail application filed by Dalip Singh came up for hearing before this Court, the further investigation was handed over to CBI as there were some allegations that the petitioner has even poured acid in the mouth of co-accused Joga Ram. Thereafter, the CBI registered the present FIR and the petitioner was arrested on 27.12.2018.

Learned senior counsel for the petitioner has further argued that as per the original complaint given by the prosecutrix/victim, the time of occurrence is given as 3.00 PM, whereas it was later on changed to 4.00 PM to 5.00 PM for the reasons that on that day, the petitioner was busy in investigation of another FIR No. 183 dated 12.09.2017, in which, he had produced accused Devraj before the Court.

Learned senior counsel for the petitioner has further referred to a report of DSP, Sub Division Kartarpur, District Jalandhar (Rural), dated 29.12.2017, submitted to S.S.P., Jalandhar (Rural) with regard to allegations levelled by the prosecutrix/victim, wherein it was noticed that the complainant has not recorded statement of any witness except her own statement and the possibility of implication of the petitioner on account of the pending case against the husband of the prosecutrix/victim cannot be ruled out and the allegations levelled by her are not proved.

Learned senior counsel for the petitioner has further submitted that the husband of the prosecutrix/victim is involved in three more FIRs and, therefore, the possibility of false implication of the petitioner is noticed by the DSP.

Learned senior counsel for the petitioner, with reference to allegations qua Joga Ram, has referred to order dated 15.12.2018 passed in **CRM-M-47579-2017**, filed by Dalip Singh, wherein it is noticed that Sub-Divisional Magistrate, Phillaur had recorded statements of several witnesses and also of the doctors and also collected particulars of other cases pending against said Joga Ram. It has also been noticed that while 6 cases (3 under Excise Act, 1 under IPC Act and 2 under NDPS Act) are

pending against said Joga Ram, there are as many as 19 cases (15 under NDPS Act and 4 under IPC Act) pending against other six members of Joga Ram's family. It was also observed that Sub-Divisional Magistrate, Phillaur has concluded as under:

“As such in the last I reached at conclusion that the allegations levelled against ASI Gian Ishwar of pouring acid to Joga Ram did not prove but if he would have checked the public/officer's bathroom before sending him in, that whether any liquid is lying there which could harm him, this occurrence would not have happened. As such, he has committed negligence.”

Learned senior counsel for the petitioner has, thus, argued that the petitioner is in judicial custody for the last about one year; the challan has been presented and it is a matter of evidence, to be recorded during trial, whether the defence set up by the petitioner that he has falsely been implicated on account of registration of FIR against Dalip Singh and Joga Ram is sustainable or not.

In reply, learned counsel appearing for the respondent-CBI has argued that there are threefold allegations against the petitioner; firstly, he has registered a false case against Dalip Singh; secondly, he has demanded illegal gratification from the prosecutrix/victim and has received a sum of Rs. 50,000/-, and thirdly, there are allegations that he has committed offence under Section 376 IPC upon prosecutrix/victim.

On a Court query, learned counsel appearing for the respondent-CBI could not dispute that the first complaint was made by the prosecutrix/victim on 12.08.2017 and she was medico-legally examined on 21.08.2018.

A perusal of the MLR shows that the doctor has recorded the complete details of the case which is in fact very unusual. The same is reproduced herein below:

“As per victim Mrs.....(name withheld) w/o Dalip Singh, her husband is in police custody since 12.08.2017 under NDPS Act. She was staying at her house with her parents. With reference to her husband's police case, she went to police station maqsudan three to four times and police person Mr. Gian Ishwar used to visit her house for investigation of her case approximately daily for one month. On 13.09.2017, IO Punjab Police ASI Gian Ishwar who was investigating the FIR against her husband entered her house while she was sleeping and sexually assaulted her and threatened her not to disclose to anybody otherwise her husband will not be relieved. After the incidence she went to police station on 14.09.2017 to report but police did not register her case. Then she went to District Court with Mamta Typist at Court and gave her application to Mr. Sarabjeet Raj, Police Officer and Vishal Kumar, Lawyer to give it to Court. Then Mr. Vishal Kumar put her application to Hon'ble Punjab and Haryana High Court and her case of sexual assault was registered and given to CBI for further investigation.”

Learned counsel appearing for the respondent-CBI could not deny the fact that persons mentioned in this MLR, namely Mamta Typist, Mr. Sarabjeet Raj, Police Officer and Vishal Kumar, Lawyer, were never joined investigation for recording their statement under Section 161 Cr.P.C., though it is alleged that the prosecutrix/victim met all the aforesaid three persons on the very next day of incident i.e. 14.09.2017.

Learned counsel appearing for the respondent-CBI further referred to opinion of the doctor, wherein it is opined that possibility of sexual assault cannot be ruled out.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned senior counsel for the petitioner as well as learned counsel appearing for the respondent-CBI and also in view of the fact that prior to this FIR, the petitioner is not involved in any other case; conclusion of trial is likely to take some time and the petitioner is in judicial custody for the last about one year, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety to the satisfaction of the trial Court/Duty Magistrate concerned.

09.01.2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No