

106-C

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

CRM-M-26123-2020 (O&M)

Date of decision : 09.09.2021

Kashish Saini

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Munish Puri, Advocate
for respondent No.2-complainant.

VIKAS BAHL, J. (ORAL)

CRM-14911-2021

This is an application for preponement of the date of hearing
in the main case.

Application is disposed of as having been rendered
infructuous.

CRM-14910-2021

This is an application filed under Section 482 of Cr.P.C. for
adding of the offence punishable under Section 326 of the Indian Penal
Code, 1860 in the headnote and prayer clause of the abovesaid petition.

It has been submitted that after registration of the FIR, offence under Section 326 of IPC has been added.

For the reasons recorded in the application, the same is allowed.

Offence under Section 326 of IPC is directed to be added in the headnote and prayer clause of the main petition bearing CRM-M-26123-2020.

Registry is directed to do the needful accordingly.

Main case

Prayer in the present petition is to grant anticipatory bail to the petitioner in FIR No.67 dated 20.05.2020 registered under Sections 302, 307, 324, 323, 201, 34 of the Indian Penal Code, 1860 (Section 326 of IPC has been added subsequently) at Police Station Taragarh, District Pathankot (Annexure P-1).

Learned counsel for the petitioner has submitted that in this case, FIR was registered on the statement of complainant-Jyoti Singh against Mukesh Kumar, Pankaj Kumar, Sumesh Kumar and Dimple. The petitioner was not named in the FIR and there was no allegation of commission of any offence by any unknown person. Reference has been made to the FIR, wherein specific allegations have been made against all the accused persons including Sumesh Kumar. He has further submitted that the statements of the eye-witnesses were recorded under Section 161 of Cr.P.C. and even the disclosure statements were also recorded. Neither in the statements recorded under Section 161 of Cr.P.C. nor in the

disclosure statements, the present petitioner has been named. It is only when wife of Sumesh Kumar had moved an application that her husband- Sumesh Kumar was not present at the place of occurrence and substantiated the said fact and after 15 days, the present petitioner was falsely implicated by concocting a false story that it was not Sumesh Kumar and it was the present petitioner who was involved in the commission of offence.

It is further submitted that the Coordinate Bench of this Court vide order dated 04.09.2020 was pleased to issue notice of motion in this case and also granted the interim protection to the petitioner.

Learned counsel for the State has submitted that in pursuance of the order dated 04.09.2020 passed by the Coordinate Bench of this Court, the petitioner has joined the investigation and the challan has also been presented.

Learned counsel for the State as well as the complainant have opposed the present petition for grant of anticipatory bail to the petitioner and have stated that since the present petitioner is cousin of said Sumesh Kumar and are residing in the same locality, thus, the complainant had wrongly named Sumesh Kumar instead of Kashish Saini-present petitioner. However, the said fact that the petitioner has joined the investigation and challan has been presented, has not been disputed.

This Court has heard the learned counsel for the parties.

In the present case, it is apparent that the petitioner was not named in the FIR and rather the specific allegations were made against

four persons including Sumesh Kumar. There were no allegations that there were some unknown persons who had committed the offence. Even in the statements recorded under Section 161 Cr.P.C. as well as in the disclosure statements, the name of the petitioner has not been mentioned. It is only after an application was moved by wife of said Sumesh Kumar before the police that her husband was not present at the spot and after 15 days, the petitioner has been implicated. The question as to whether the present case is a case of false implication or there was some mistake with respect to the identity would be a matter of trial. The petitioner has joined the investigation and the challan has been presented and thus, his custodial interrogation is not required.

In view of the above, the interim order dated 04.09.2020 is ordered to be made absolute.

Accordingly, the present petition is allowed.

Before this Court parts with the present order, since vide order dated 04.09.2020, the Coordinate Bench of this Court had called for the reply from the State explaining the circumstances under which Sumesh Kumar was initially named and subsequently name of the petitioner had come up and that as to whether any false implication has been made.

In response to above, the State has filed reply. It has been mentioned in the reply that it is stated in the supplementary statement that it was not Sumesh Kumar but Kashish Saini, who is the present petitioner, who is involved in the present case. It has further been stated

in the reply that CCTV cameras on the way to river “Raavi” were checked but they were found to be not working.

As observed in the earlier part of the present order, the issue is as to whether the present case is a case of mistaken identity or it is a case of false implication, would be considered by the trial Court at the appropriate stage.

However, in view of the said debatable issue, this Court does not deem it appropriate to pass any further order.

Nothing stated above shall be construed as an expression of opinion on the merits of the case.

09.09.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No