

In the High Court for the States of Punjab and Haryana at
Chandigarh

Date of Decision: August 30, 2022

1. CRM-M-1141-2022

Gurpreet Singh @ Gopi ... *Petitioner*

Versus

State of Punjab ... *Respondent*

2. CRM-M-3742-2022

Gurpreet Singh @ Gopi ... *Petitioner*

Versus

State of Punjab ... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Balbir Singh Jaswal, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

Vivek Puri, J.

By way of CRM-M-1141-2022, the petitioner is seeking anticipatory bail in case bearing FIR No. 43, dated 30.03.2019, under Sections 363/366-A of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offence Act, registered at Police Station Khilchian, District Amritsar Rural.

By way of CRM-M-3742-2022, the petitioner is seeking to quash the impugned order dated 16.12.2019 passed by the Court of learned Sub Divisional Judicial

Magistrate, Baba Bakala Sahib vide which he has been declared proclaimed offender in the case bearing FIR No. 43, dated 30.03.2019, under Sections 363/366-A of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offence Act, registered at Police Station Khilchian, District Amritsar Rural.

On 10.02.2022, the following order was passed:-

“CRM-M-3742-2022

By this petition, the petitioner seeks quashing of the impugned order dated 16.12.2019 (copy Annexure P-6) passed by the learned SDJM, Baba Bakala, by which the petitioner had been declared to be a proclaimed offender in case FIR no.43 dated 30.03.2019, registered at Police Station Khilchian, District Amritsar, for the alleged commission of offences punishable under Sections 363 and 366-A of the IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012.

Learned counsel for the petitioner submits that, firstly, the petitioner is actually a resident of the same village as is shown in the memo of parties and that the husband of the sarpanch of the village made an incorrect statement (copy Annexure P-4) when the summons/proclamation were to be served upon the petitioner, that he was not residing in the village at that point. Secondly, he submits that the matter, in any case, has been

compromised between the petitioner and the complainant.

Though it is to be observed by this court, prima facie at least, that it would be difficult to believe that a statement would be made to that effect unless the present petitioner was actually not residing in the village at that point of time; and further, one of the offences alleged to have been committed is one under the provisions of the POCSO Act, however, since the complainant, i.e. the mother of the girl/victim is stated to have compromised the matter with the petitioner and a perusal of the FIR shows that the allegation was that the girl was missing since the previous night, with her shown to be 15 years old and with the petitioner stated to

be 19 years old at that time, notice of motion is issued.

Mr.Saurav Khurana, DAG Punjab, accepts notice on behalf of the respondent-State, at the asking of the court.

A gazetted officer is directed to file a reply to the petition before the next date of hearing.

CRM-M-1141-2022

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., in the aforesaid FIR.

In view of the above, notice of motion is issued.

Mr.Saurav Khurana, DAG Punjab, accepts notice on behalf of the respondent-State, at the asking of the court.

The petitioner would surrender before the trial Court within a period of one week from today and be admitted to interim bail to the satisfaction of that court till the next date of hearing before this court and shall join investigation, if he is so required, with the trial court therefore summoning the investigating officer in that regard.

However, before admitting the petitioner even to interim bail, the statement of the complainant in the FIR shall be got recorded by the learned trial court, as to whether actually there is any compromise subsisting between her and the petitioner, or not. It is made clear that if the complainant in the FIR does not state that the matter has been compromised, the petitioner shall not be admitted to interim bail.

Adjourned to 28.04.2022.

A photocopy of the order be placed in the file of the other connected case numbered above.”

CRM-M-1141-2022

Learned counsel for the petitioner contends that in terms of the interim directions, the petitioner has surrendered in the learned trial Court on 15.02.2022. The statement of the complainant in terms of the interim directions was also recorded, wherein she has acknowledged the fact of compromise having been effected between the parties. The petitioner has also been admitted on interim bail by the learned trial Court subject to the final decision in the present petition. Even the petitioner has joined the

investigation and the Investigating Officer had made a statement before the learned trial Court on 24.02.2022 that his custodial interrogation is not required for further investigation.

On the instructions from ASI Jaspreet Singh, the learned State counsel has not assailed the aforesaid factual aspects.

In these set of circumstances, the order dated 10.02.2022 passed in CRM-M-1141-2022 is made absolute. It is also directed that the petitioner shall furnish fresh bail bonds in the trial Court to its satisfaction within a period of 30 days and furthermore, this order shall be subject to the compliance of the conditions laid down in Section 438(2) of the Code of Criminal Procedure.

CRM-M-1141-2022 is, accordingly, allowed.

CRM-M-3742-2022

Briefly, the FIR has been registered on the basis of the statement of the complainant alleging that the petitioner had kidnapped her daughter, who is aged about 15 years.

It has been contended by the learned counsel for the petitioner that the petitioner has been declared proclaimed offender in terms of the order dated 16.12.2019. The information was submitted by the husband of the present Sarpanch to the effect that the petitioner is not

residing in the village, which information was factually incorrect. No effort was made to procure the correct address of the petitioner and he has been wrongly declared to be proclaimed offender. However, it has been further stated that in the statement under Section 164 Cr.P.C., the victim has not levelled any allegation of threat, pressure or allurement exercised upon her at the instance of the petitioner when she left her house. However, there are allegations to the effect that she was forcibly confined in a house in Delhi. Significantly, there are no allegations with regard to the sexual exploitation levelled by the victim. Moreover, an amicable settlement has also been effected and the compromise (Annexure P-7) has also been executed between the petitioner and the complainant.

The learned State counsel has submitted that the petitioner has been correctly declared proclaimed offender, the victim remained in his custody for a period of about 2 weeks and furthermore, no compromise can be effected in a non-compoundable offence.

It is significant to note that the petitioner has assailed the order vide which he has been declared proclaimed offender. He has already surrendered in the Court and granted interim bail. Furthermore, he has joined the investigation and his custodial interrogation is not required. Even without dilating on the legality and validity of

the compromise, which has been allegedly effected between the petitioner and the complainant, sufficient and reasonable grounds are made out to quash the order vide which he has been declared proclaimed offender in view of the peculiar circumstances, which are emerging in the case and noted aforesaid.

In these set of circumstances, the impugned order dated 16.12.2019 (Annexure P-6) is quashed.

CRM-M-3742-2022 is, accordingly, allowed.

August 30, 2022
vk

(Vivek Puri)
Judge

Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No