

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

205

CRM-M-884-2022

Date of Decision: 09.02.2023

Balkar Singh**...Petitioner****Versus****State of Punjab and Another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. P.K.S. Phoolka, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab

Mr. Parveen Sharma, Advocate for

Mr. Davinder Kumar, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

Reply by way of affidavit dated 29.01.2022 of Balkar Singh,

Deputy Superintendent of Police, Sub-Division Malout, District Sri

Muktsar Sahib filed on behalf of respondent-State is taken on record.

Registry is directed to tag the same at appropriate place.

On 11.01.2022, the following order was passed:-

“Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.0323 dated 07.12.2021 under Section 376-D IPC registered at Police Station Lambi, District Shri Muktsar Sahib.

Learned counsel for the petitioner contends that false implication of the petitioner in the case in hand is evident from the fact that the petitioner was not named in the FIR in question. In addition, it has also been submitted that there was a delay of 03 days in registration of the FIR from the date of alleged occurrence. Learned counsel, while drawing the attention of this Court to the FIR annexed as Annexure P1, submits that in the FIR, the prosecutrix who admittedly is a 40 years old married woman had alleged that an unknown person along with Kaur Singh had raped her against her wishes. However, while getting her statement recorded under Section 164

Cr.P.C., she had come up with an altogether contrary version inasmuch as she did not name coaccused Kaur Singh therein and rather stated that one person who was wearing a mask alongwith an unknown person had committed rape upon her. Learned counsel submits that thereafter vide Annexure P-2 (affidavit dated 09.12.2021), the prosecutrix had given a duly sworn in affidavit to the investigating agency, wherein, she had exonerated the petitioner of any wrongdoing by stating that the petitioner was not the person who had committed rape upon her.

Notice of motion.

On asking of the Court, Ms. Jaspreet Kaur, AAG, Punjab accepts notice on behalf of respondent No.1-State.

At this stage, Mr. Davinder Kumar, Advocate has put in an appearance on behalf of respondent No.2 and filed his power of attorney through WhatsApp which is taken on record. Original power of attorney be filed in the Registry of this Court.

Learned counsel for respondent No.2 has not disputed the submissions made by counsel opposite and also not controverted the contents of Annexure P-2 i.e. duly sworn in affidavit of the prosecutrix.

Learned State counsel shall file reply qua the authenticity of the duly sworn in affidavit (Annexure P-2).

Adjourned to 24.05.2022.

Meanwhile, the petitioner is directed to join the investigation and appear before the investigating agency as and when called upon to do so. In the event of his arrest, he shall be admitted to interim bail on his furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer. The petitioner shall abide by the terms and conditions as envisaged under Section 438(2) Cr.P.C.”

Learned State counsel submits that petitioner has already joined investigation and no custodial interrogation is required.

In view of the above, the petition is allowed and the interim bail granted to the petitioner vide order dated 11.01.2022 is made

absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C

If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

09.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>