

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

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CRM-M-6914-2023 (O&M)

Date of decision: 22.11.2023

Gurmeet Singh**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Kamal Narula, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 438 of Cr.P.C. by the petitioner seeking grant of anticipatory bail in case FIR No. 141 dated 21.09.2022, registered under Section 376 IPC and Section 4 of the POCSO Act, 2012 at Police Station Sadar Jalalabad, District Fazilka.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by complainant 'E' (*name withheld*) alleging therein that since her childhood, she had been residing in the house of her maternal grandfather. Now she was in 10th standard. On 03.09.2022, she had come back from her school at about 03:00 PM and was alone at her house, when the petitioner along with 2-3 unknown persons came therein and forcibly committed rape upon her, whereas the remaining persons kept standing outside. He also threatened the victim to face dire consequences, if she disclosed about the incident to anyone. Out of fear, she did not say anything to her family members and disclosed it to her mother, who came to meet her

5-6 days after the incident. Thereafter, there were talks of compromise being effected with the family of the petitioner but the same turned futile. The matter was reported to the police. After registration of FIR, investigation proceedings have been initiated and the same are going on.

3. The present petition has been filed by the petitioner seeking pre-arrest bail on the ground that he has been falsely implicated in this case. There was delay of 18 days in lodging of the FIR, which had remained unexplained. He was an Army personnel posted as Jammu & Kashmir and had remained on leave from 17.07.2022 to 04.09.2022. He had reported to his Battalion on 04.09.2022. In fact, there was a dispute regarding cultivation of land between the family of the victim and his family, as the family of the victim had not been allowing his family to cultivate the land and had stopped the passage of water canal to their land. The father of the petitioner, namely Sh. Bhajan Singh, had moved a complaint in this regard on 19.07.2022 i.e. 02 months before the alleged incident to the police apprehending that his family members or the petitioner could be falsely implicated in some case as he had been receiving threats in this regard. The petitioner was ready to join the investigation. His custodial interrogation was not required, therefore, it was urged that the petition deserved to be allowed.

4. The respondent-State has contested the petition in terms of status report filed by it by alleging that there were specific and serious allegations against the petitioner. In her statement recorded under Section 164 Cr.P.C., the victim had reiterated the allegations levelled in the complaint. The custodial investigation of the petitioner is required for

thorough investigation in the matter. Therefore, he argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at a considerable length and have perused the record.

6. The petitioner is alleged to have committed the offence of aggravated penetrative sexual assault upon the prosecutrix on 03.09.2022. There was undoubtedly a delay of 18 days in reporting the matter to the police, but the benefit of this delay cannot be extended to the petitioner at this stage. It is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. However, no such circumstance has been made out in this case. More so, it is equally well settled proposition of law that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also material which would have been concealed. The custodial interrogation is qualitatively more elicitation oriented than questioning a suspect which is well ensconced with a favourable order under Section 438 of Cr.P.C.

7. Keeping in view the nature of allegations, which have been levelled against the petitioner, I am of the considered opinion that his custodial interrogation is must for proper investigation of the matter. Therefore, no ground has been made out of extending the benefit of pre-arrest bail to the petitioner. Hence, the petition is dismissed.

22.11.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No