

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

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CRM-M-10531-2023

Date of Decision: 11.04.2023

Mohd. Yasir Hussain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vinay Kumar Pandey, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by DSP Yashwant Singh)

JAGMOHAN BANSAL, J. (ORAL)

On 28.02.2023, the following order was passed:-

“Through instant petition under Section 438 of Code of Criminal Procedure, 1973, the petitioner is seeking anticipatory bail in FIR No. 197 dated 27.06.2022, under Sections 354-A, 452, 506 and 376 IPC, registered at Police Station Nagina, District Nuh.

The case of prosecution is that a message (Ruqa) was received at Police Station Nagina with MLR dated 26.06.2022 of the prosecutrix about ingestion of comphour (Kapoor) Tablet. A complaint came to be filed by father-in-law of the prosecutrix alleging that his son works in Gurugram and resides there. He comes after a gap of 10-12 days and on 25.6.2022 his son was not at home and at around 11.30 p.m., he heard hue and cry from the room of his son. He

reached near the room of his son and door of the room was bolted from inside and a man was with his daughter-in-law. When he asked his daughter-in-law, she told him that Mohammad Yasir was committing wrong with her. He (complainant) bolted the door from outside and called father of the accused who came there and got room opened from inside. Accused Mohammad Yasir was present with his daughter-in-law in the room. On account of social shame, his daughter-in-law consumed poisonous substance and she was taken away to government hospital on 26.06.2022. The Police carried out investigation and in the investigation it was found that there was sexual relation between accused and prosecutrix. It was found that when father-in-law of the prosecutrix came to her room, she switched off lights of the room and told her father-in-law that there is no one in her room. The accused was made to hide beneath bed of the prosecutrix. On search, the accused was recovered. In such circumstances, the police deleted Sections 376 IPC and challan was presented in August' 2022 under different Sections of IPC but not under Section 376 IPC.

Learned counsel for the petitioner inter alia contends that investigation of the police which was conducted prior to filing of challan indicates that there was sexual relation between the prosecutrix and petitioner. She had consumed Kapoor tablets by mistake. It was prosecutrix who tried to mislead her in-laws on being caught. The petitioner joined investigation, was arrested, remained in custody for

two weeks and thereafter he was released on regular bail by trial court as 376 IPC was not invoked in the challan. The matter has been transferred to Crime Branch which has conducted further investigation. The petitioner cannot be put behind the bars second time only on the ground that matter has been referred to another agency. The petitioner is ready to join investigation and co-operate. The petitioner is not involved in any other case.

Notice of motion.

On the asking of Court, Ms. Dimple Jain, AAG, Haryana who is present in court on advance notice, accepts notice on behalf of State-respondent.

Learned State counsel submits that it is factually correct that challan stands presented against the petitioner and Section 376 IPC was not invoked in the challan, however, the matter has been referred to crime branch and at present Section 376 IPC stands added. As per FSL report, semen has been found on the salwar of the prosecutrix, thus, there is need of blood samples of the petitioner to carry out DNA profile.

Learned counsel for the petitioner undertakes that petitioner will appear before the investigating officer and give his blood sample.

Having considered contents of the FIR, role attributed to the petitioner, gravity of offence, sentence prescribed for commission of alleged offence, arguments put forth by the petitioner and law enunciated by Hon'ble Supreme Court in Thana Singh

v. Central Bureau of Narcotics, (2013) 2 SCC 590, Arnab Manoranjan Goswami V. State of Maharashtra, (2021) 2 SCC 427, Satender Kumar Antil V. CBI (2022) 10 SCC 51, Siddharam Satlingappa Mhetre V. State of Maharashtra & Ors., 2010 SCC OnLine SC 1375, Shri Gurbaksh Singh Sibbia V. State of Punjab (1980) 2 Supreme Court Cases 565, this Court is of the prima facie opinion that petitioner deserves protection from arrest.

Accordingly, at the first instance, the petitioner is directed to appear before investigating officer on 04.03.2023 and thereafter as directed by IO. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing of bail/surety bonds to the satisfaction of investigating/arresting officer. The petitioner shall co-operate the investigating officer.

If the arresting officer does not permit the petitioner to join the investigation, the petitioner would appear before the learned Illaqa Magistrate who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this Court.

Adjourned to 11.04.2023.

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.”

Learned State counsel, on instructions from DSP Yashwant Singh, submits that petitioner has joined investigation and no custodial interrogation is required.

In view of the above facts and circumstances, the petition is allowed and the interim bail granted to the petitioner vide order dated 28.02.2023 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

11.04.2023
Mohit Kumar

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