

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M-15212-2023

Date of Decision: 20.07.2023

SURESH KUMAR

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. H.S.Randhawa, Advocate for the petitioner.

Ms. Ruchika Sabherwal, DAG Punjab.

Mr. Pankaj Kalia, Advocate for the complainant.

* * * *

VIVEK PURI, J. (ORAL)

1. On 24.05.2023, following order was passed by the Co-ordinate

Bench:

“Through instant petition under Section 438 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) the petitioner is seeking anticipatory bail in FIR No.06 dated 13.01.2023 under Sections 376(2) and 420 of IPC, registered at Police Station, Naya Gaon, District S.A.S Nagar.

Learned counsel for the petitioner inter alia contends that complainant has lodged identical complaints against different persons on earlier occasions and Investigating Officer at Chandigarh has verified this fact. The Chandigarh Police after investigation had prepared cancellation report, however, after the change of S.S.P, the matter was transferred to Punjab Police from Chandigarh. The Punjab Police has registered FIR against the petitioner. The complainant is a law graduate and she is practicing at Dera Bassi. The complainant got herself enrolled with Bar Council prior to enrollment of the petitioner with Bar Council. The prosecutrix has alleged that petitioner committed rape on three dates i.e. 29.10.2021, 02.11.2021 and 26.11.2021. As per FIR, first incident took place under the influence of intoxicants and thereafter, she was raped on the pretext of marriage. The complainant had lodged identically worded FIR No.78 dated 17.03.2021 under Section 376 of IPC against another person.

In the said FIR, the accused was married and for the first time, he made physical relations against wish of the prosecutrix and thereafter, on the pretext of marriage physical relation were made during February 2020 to September 2020.

The prosecutrix is present in Court.

Learned counsel for the prosecutrix inter alia submits that petitioner, for the first time, made physical relations after giving her intoxicants and thereafter, under the threat of making photographs/videos of prosecutrix viral. The petitioner did not disclose his marital status and promised the prosecutrix to solemnize marriage with her. The Chandigarh Police conducted bias investigation and allegations qua complaints by neighbourers have no bearing with the present case. The petitioner and his friends are regularly threatening the prosecutrix.

Learned State counsel, on instructions from ASI Raghubir Singh, submits that matter is still under investigation and there are serious allegations of rape against the petitioner.

*Meantime, keeping in mind registration of FIR(s) by complainant prior to present FIR, marital status of complainant at the time of alleged incident, report of Chandigarh Police, fact that complainant is a law graduate and quite mature to understand consequences of her act and omissions 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, at the first instance, the petitioner is directed to appear before Investigating Officer on 30.05.2023 at 10:00 AM and thereafter as directed by Investigating Officer. 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 20.07.2023.

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. ”

2. Learned counsel for the petitioner contends that the petitioner has joined the investigation in pursuance of the interim directions issued by this Court.

3. Learned State counsel, on instructions from ASI Iqbal Singh, has not disputed this fact and has stated that custodial interrogation of the petitioner is not required.

4. Considering above, the petition is allowed and the interim bail granted by this Court vide order dated 24.05.2023 is made absolute. This order is subject to the condition that the petitioner abides by the conditions as stipulated under Section 438(2) of the Cr.P.C.

20.07.2023

Janki

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No