

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27499-2023 (O&M)
Date of Decision : 04.07.2023

Jogender

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anshumaan Dalal, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG Haryana

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ALKA SARIN, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.257 dated 13.08.2022 registered under Sections 376-D, 377, 34 of the Indian Penal Code, 1860 at Police Station Industrial Area, Bhiwani, District Bhiwani.

2. On 29.05.2023 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.257, dated 13.08.2022 registered under Sections 376-D, 377, 34 of the Indian Penal Code, 1860 at Police Station Industrial Area, Bhiwani, District Bhiwani.

Learned counsel for the petitioner inter alia contends that story narrated in FIR is altogether different from story narrated in statement under Section 164 CrPC. In the statement under Section 164 CrPC, Sunil is named as main accused whereas in FIR, his name is not mentioned. The challan was not presented against the petitioner. The prosecutrix during trial turned hostile. The prosecutrix in her second statement under Section 164 CrPC named five persons whereas in her first statement, four persons were named and she has turned hostile even qua four persons. The petitioner is ready to join investigation and face proceedings. There is no possibility of flee from justice. The arrest would cause irreparable loss, mental agony, embarrassment and humiliation to petitioner as well entire family .

Notice of motion, returnable for 04.07.2023.

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

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 04.06.2023 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 appeal 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.

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.”

3. Learned counsel for the State, on instructions from constable Saroj Bala, states that the petitioner has since joined investigation and is fully co-operating and that he is no longer required for further custodial interrogation as of now.

4. In view of the above, the order dated 29.05.2023 is made absolute. The petitioner shall, however, join investigation as and when called for. The petitioner shall also abide by all the terms and conditions as specified under Section 438(2) of the Code of Criminal Procedure, 1973.

5. Disposed off accordingly. Pending applications, if any, also stand disposed off.

04.07.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO