

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH  
289

CRM-M No.43432 of 2023  
Date of decision: 20.12.2023

Kulwant Singh ... Petitioner  
  
Vs.  
  
State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Karandeep S.Sidhu, Advocate,  
for the petitioner.  
  
Mr. Shiva Khurmi, AAG, Punjab,  
for the respondent-State.

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MANISHA BATRA, J.

1. The present petition has been filed under Section 438 of Cr.P.C. seeking anticipatory bail in FIR mentioned below:-

| FIR No. | Dated      | Police Station             | Sections                                        |
|---------|------------|----------------------------|-------------------------------------------------|
| 43      | 03.04.2022 | Mamdot, District Ferozepur | 376-D, 342 and 120-B of Indian Penal Code, 1860 |

2. The brief facts of the relevant for the disposal of this case are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix ‘P’ (name withheld) alleging therein that though she was married with one ‘S’ (name withheld) but from the last two years she was residing at her parental house with her two years old son. The accused Amro Bai who is residing in her neighbourhood had

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assured to secure a job for her in some factory. On 28.11.2021, she took her to Jalalabad with the accused Mukhtiar Singh, on a motorcycle on the pretext of providing some job. On reaching there, they had taken her to some room where a glass of water was given by the accused-Amro Bai on consuming which, she had lost consciousness and on regaining the same, she found that the present petitioner had committed rape upon her. They kept her confined there for three days. Thereafter, the accused Amro Bai and Mukhtiar Singh took her to Ferozepur to some unknown location and then to Haryana. She was sold to someone there and was left. She managed to make call to her parents who had brought her home on 27.03.2022. After registration of the FIR, investigation proceedings were initiated. The accused Amro Bai and Mukhtiar Singh were arrested. They faced trial before the learned trial Court and were acquitted vide judgment dated 02.08.2023. The present petitioner who was also nominated as an accused could not be arrested at that time.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case, he did not commit the subject offences. There was delay of more than three months in reporting the matter to the police as well as in conducting medico legal examination of the prosecutrix. Her version had not been relied upon by the trial Court in the case of co-accused against whom similar allegations were levelled. They have been acquitted and the said acquittal has attained finality. The detention of the petitioner is not required. Neither any recovery is to be effected

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from him. In view of the acquittal of the co-accused, he deserves to be given benefit of pre-arrest bail. Therefore, it is argued that the petition deserves to be allowed. To substantiate his argument, learned counsel for the petitioner has placed reliance upon authorities cited as **Sudo Mandal @ Diwarak Mandal v. State of Punjab**, 2011 (2) R.C.R. (Criminal) 453 & **Rajesh Patel v. State of Jharkhand**, 2013 (2) R.C.R. (Criminal) 346.

4. Learned counsel for the petitioner has also placed on record Annexures P-4 and P-5, copies of judgment dated 02.08.2023 of acquittal of the co-accused and of the sworn statement of the prosecutrix as recorded during trial of the co-accused respectively.

5. It will be relevant to mention here that vide order dated 01.09.2023, the petitioner was directed to join the investigation. The respondent-State has filed status report on 14.12.2023 submitting that the petitioner has joined the investigation before the investigating agency on 04.10.2023. It has been affirmed that the co-accused have been acquitted of the charges as framed against them. It is, however, submitted by learned State counsel that there are specific and serious allegations against the petitioner. The matter requires thorough investigation and, therefore, the petitioner does not deserve to be given concession of anticipatory bail.

6. I have heard learned counsel for the parties and have perused the record.

7. As per the allegations, on 28.11.2021, the co-accused Amro Bai and Mukhtiar Singh took the victim to a room in Village Jalalabad in

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their motorcycle and made her drink a glass of water on consuming which she had become unconscious and on regaining consciousness, she came to know that the present petitioner and co-accused Mukhtiar Singh had committed rape upon her. They had kept her there in confinement for a period of three days and then she was left at some unknown place. In her statement recorded under Section 164 of Cr.P.C., the victim had reiterated the allegations as levelled in the FIR. The co-accused Mukhtiar Singh and Amro Bai who had had been arrested and challaned, have since been acquitted of the charges as framed against them, by extending benefit of doubt. In my considered opinion, the contention raised by learned counsel for the petitioner that the acquittal of these accused exonerates the present petitioner as well, cannot be considered at this stage.

8. Further, the cases cited by learned counsel for the petitioner are pertaining to appeals filed against the judgment of conviction of accused who were previously absconding and had been arrested and tried subsequent to acquittal of co-accused and not relating to cases where question of grant of anticipatory bail to such accused was concerned. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses and likelihood of fleeing justice. The Courts are required to be guided by consideration such as nature and gravity of the offences, the

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role attributed to the applicant and the facts of the case, while considering whether to grant anticipatory bail or refuse it and it is a matter of discretion to grant or not to grant bail. Reference in this context can be made to **Sushila Aggarwal and others v. State (NCT of Delhi)**, (2020) 5 SCC 1 wherein the Hon’ble Supreme Court had observed so. Applying the aforementioned conditions to the present case and keeping in view the nature of the offence alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances but without meaning to make any comment on the merits of the case, I am of the considered opinion that for conducting thorough investigation in the matter, further custodial interrogation of the petitioner is required. More so, no sparing or extraordinary circumstance has been made out entitling him to seek concession of pre arrest bail as a matter of right. Accordingly, the petition is dismissed.

20.12.2023  
Parveen Sharma

(MANISHA BATRA)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |