

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-46543-2023 (O&M)

Date of Decision : 08.12.2023

OM BABU & ANOTHER

.... Petitioners

VERSUS

STATE OF PUNJAB

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mandeep Kumar Dhot, Advocate for the petitioners.

Mr. Adhiraj Singh Thind, AAG Punjab.

ALKA SARIN, J. (ORAL)

1. This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioners in FIR No.152 dated 05.10.2020, under Sections 354, 354-A and Sections 354-B, 342, 323, 506, 509 (added later on) of the Indian Penal Code, 1860 registered at Police Station Longowal, District Sangrur.

2. On 06.10.2023 the following order was passed :

"This is a petition under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) for grant of anticipatory bail to the petitioners in FIR No.152 dated 05.10.2020 under Sections 354, 354-A of the Indian Penal Code, 1860 (IPC) and Sections 354-B, 342, 323, 506, 509 IPC (added later on) and Sections 376, 511 IPC (added subsequently) registered at Police Station Longowal, District Sangrur.

Learned counsel for the petitioners would contend that initially the FIR was lodged on the allegations that on 05.10.2020 the co-accused Surinder Pal Singh had called the complainant to his house and when she reached his house he tried to outrage her modesty. It was also alleged that the co-accused had also called some unknown person to his house and they tried to make physical relations with her and when she resisted they tried to remove her clothes to make a video. However, on the pretext of going to the washroom, the complainant escaped from the house. The learned counsel would further contend that the version was improved in the statement recorded under Section 161 CrPC wherein it was stated that co-accused Surinder Pal Singh called the complainant at 12.00 PM and asked her to come to Longowal and that he would arrange work for her. It is further stated in the statement that she went to Sunam from Mehla Chowk and the co-accused took her to Longowal from Sunam at 2 PM. After reaching Longowal, the co-accused developed relations with her. It is stated that it was a consensual relationship. Thereafter, she asked him to drop her.

However, he did not drop her. At about 5.00 PM he called two persons and then he forcefully threw one person upon her to make a video. It is further contended that all the co-accused were granted the concession of anticipatory bail.

Subsequently, after her cross-examination, she identified both the petitioners. After the recording of the statement of the complainant in cross-examination, the Judicial Magistrate Ist Class, Sangrur noticed that prima facie commission of offence under Sections 376 read with Section 511 IPC was made out which was triable exclusively by the Court of Sessions and hence committed the case to the Court of Sessions. The learned counsel for the petitioners would further contend that the petitioners have falsely been implicated in the case and that there have been improvements in every statement made by the complainant.

Notice of motion.

Mr. Adhiraj Singh Thind, AAG Punjab accepts notice on behalf of respondent-State of Punjab. Learned counsel for the State is not in a position to dispute the factual position as narrated by the learned counsel for the petitioners.

List on 08.12.2023.

Meanwhile, the petitioners shall surrender before the Trial Court/Addl. Sessions Judge (Duty) within 10 days from today and on their doing so the Trial Court/Addl. Sessions Judge (Duty) shall release them on interim bail subject to its satisfaction."

3. Learned counsel for the State, on instructions from ASI Raghbir Singh, has stated that till date the petitioners, who were directed to surrender

within 10 days vide order dated 06.10.2023, have not surrendered before the Trial Court concerned.

4. Learned counsel for the petitioners states that the petitioners could not surrender as one of them was suffering from Dengue.

5. Heard.

6. There is no explanation forthcoming as to why the petitioners did not comply with the order dated 06.10.2023 passed by this Court. The only argument of the learned counsel for the petitioners is that that one of them was suffering from Dengue but this cannot be accepted primarily because there is no medical record which has been produced before this Court. Secondly, merely because one person was allegedly suffering from Dengue, there was no reason for the other person not to surrender as directed.

7. In view of the above and since the order dated 06.10.2023 passed by this Court has not been complied with, this Court is left with no other option except to dismiss the present petition for non-compliance of the order.

8. Dismissed. Pending applications, if any, also stand disposed off.

08.12.2023
Aman Jain

(ALKA SARIN)
JUDGE

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