

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

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CRM-M-49740-2023 (O&M)

Date of decision: 05.12.2023

Raman Singh @ Sajjan**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Kuldip Singh, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 438 of Cr.P.C. by the petitioner seeking grant of anticipatory bail in case FIR No. 28 dated 18.02.2023, registered under Sections 376 and 452 of the IPC at Police Station City Fazilka, District Fazilka.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by the prosecutrix 'D' (*name withheld*) on 18.02.2023 alleging therein that she was married to one 'G' (*name withheld*) and two children. Her husband was not mentally fit and was missing from the last eight years. She had come in contact with the petitioner about five years back. He had introduced himself as Sajan and had also disclosed to her that he was posted in Army. The casual friendship between them had subsequently turned into loveable one. The petitioner had maintained physical relations with her on the pretext of performing marriage with her and subsequently had performed with her in Gurdwara Sahib. He used to

visit her whenever he used to come on vacation from his place of posting. Subsequently, he stopped visiting her and whenever the complainant used to call him on phone, he started making excuses. On 26.01.2023 at about 05:00 P.M., he came to her house when she was alone and forcibly committed rape upon her. At that time, she did not disclose anything to anyone out of fear but get herself medico-legally examined on 05.02.2023 and the matter was reported to the police on 15.05.2023 but on the said date, She had not gone for recording of her statement and the same was reocrded on 18.02.2023. After registration of the FIR, investigation proceedings have been initiated and the same are going on. The petitioner had filed an application for grant of anticipatory bail before the Additional Sessions Judge, FTC (POCSO), Fazilka but the same had been dismissed, vide order dated 18.05.2023 (Annexure P-3).

3. The present petition has been filed by the petitioner on the ground and his counsel has argued that he has been falsely implicated in this case. There is inordinate and unexplained delay of 25 days in giving intimation about the alleged incident of rape upon the victim to the police. The petitioner had never given any assurance to the victim for performing marriage with her. Infact, it was as a case of consensual relationship. A compromise had been arrived at between the parties. The victim had sworn an affidavit on 03.07.2023 (Annexure P-2) in favour of the petitioner. It is submitted that the petitioner is ready to join investigation. His custodial interrogation is not required. No recovery is to be effected from him. Therefore, it is urged that the petitioner deserves to be given concession of anticipatory bail.

4. *Per contra*, learned State counsel has resisted the prayer made by the petitioner in terms of the status report dated 03.11.2023. He has argued that there are specific and serious allegations against the petitioner. The affidavit alleged to have been sworn by the victim in his favour cannot be looked into at this stage. His custodial interrogation is must for the thorough investigation of the matter by the police. Henc, it is argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at a considerable length and have perused the record.

6. The petitioner is alleged to have developed physical relations with the victim on the pretext of performing marriage with her and is even alleged to have performed marriage with her. He is further alleged to have left her and have committed rape upon her on 26.01.2023 after entering into her house when she was alone. Though a plea has been taken by him that he was having consensual relation with her but this Court is of the view that custodial interrogation of the petitioner by the police is required for thorough investigation of the matter. Even otherwise, it is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. However, no such circumstance has been made out in this case. More so, it is equally well settled proposition of law that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information. The custodial interrogation is qualitatively more elicitation oriented than questioning a suspect which is well ensconced with a favourable order under Section 438 of Cr.P.C.

7. Keeping in view the nature of allegations, which have been levelled against the petitioner, the acts attributed to the petitioner and attendant facts and circumstances, I am of the considered opinion that no ground has been made out for extending benefit of pre-arrest bail to the petitioner. Hence, the petition is dismissed.

05.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No