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

CRM-M-58775-2022
Date of Decision: 24.02.2023

ASI Pawan Kumar

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Lalit Sharma, Advocate for
Mr. Gursimran Singh, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG, Punjab.

HARSH BUNGER, J. (Oral)

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail in case FIR No.262 dated 22.08.2022, registered under Section 377 of the Indian Penal Code, 1860, registered at Police Station Civil Lines, Amritsar (Annexure P-1).

On 22.12.2022, the following order was passed by this Court :-

“Prayer in this petition, filed under Section 438 of the Code of Criminal Procedure, 1973, is for grant of pre-arrest bail to the petitioner, in case FIR No.262 dated 22.08.2022, registered under Section 377 of the Indian Penal Code, at Police Station Civil Lines, Amritsar (Annexure P-1).

Learned counsel for the petitioner reiterates his submissions that the petitioner has falsely been implicated in the present case and submits that two FIRs i.e. FIR No.49 dated 22.05.2012 under Sections 302 and 307 of the Indian Penal Code at Police Station Majitha, Amritsar and FIR No.124 dated

05.08.2016 under Sections 21 and 29 of the NDPS Act, 1985, under Section 420 IPC, under Section 42 of the Prisoner Act at Police Station Gate Hakima, Amritsar, were registered against complainant/respondent No.2 and he was taken into custody in case FIR No.49 dated 22.05.2012. It is submitted that respondent No.2 is in habit of misbehaving while being taken for Court hearings and on one such occasion, respondent No.2/complainant had heated argument with petitioner and on this account the complainant was having grudge against the petitioner and hence, the petitioner has falsely been arrayed as an accused in the present case. It is submitted that petitioner has not committed any offence as alleged in the FIR. Learned counsel also submits that there is no material on record to show or substantiate the fact that any DNA belonging to the petitioner was found on the person of complainant/respondent No.2. It is submitted that there is an unexplained delay of four days in registration of FIR, accordingly petitioner prays for grant of anticipatory bail.

Status report by way of affidavit of Varinder Singh Khosa, PPS, Assistant Commissioner of Police, North, Amritsar City has been filed on behalf of respondent-State in the Court today. The same is taken on record, subject to all just exceptions. While referring to para 7 of status report learned State counsel submits that the actual facts could only come forth, when the DNA sample of the petitioner is obtained and it is matched with human semen and male DNA of unknown individuals detected on underwear of the complainant-responder No.2 Sahib Singh as the complainant had given history to the doctor qua 'Did ejaculation occur outside body orifice'.

Learned counsel for the petitioner submits that he has instructions from the petitioner to state that the petitioner is ready and willing to give his sample for DNA test as and when asked for.

Keeping in view the aforementioned facts and circumstances and also the statement of learned counsel for the petitioner that petitioner is ready and willing to give his sample for DNA test; the petitioner is granted ad interim bail to the satisfaction of the Investigating/Arresting Officer. However, he shall join the investigation as and when directed by the Investigating agency and shall abide by the terms and conditions laid down under Section 438(2) Cr.P.C."

Learned counsel for the petitioner submits that pursuant to the aforesaid order, the petitioner has joined the investigation and has also given his sample for DNA test.

Learned State counsel on instructions from ASI Bikaram Singh has not disputed the aforesaid fact of joining of investigation and sample given by the petitioner for DNA test. Learned State counsel further submits that custodial interrogation of the petitioner is not required at this stage.

Heard learned counsel for the parties.

Since the petitioner has joined the investigation and his custodial interrogation is not required at this stage, the present petition is allowed and the ad-interim order dated 22.12.2022 by this Court is made absolute.

However, the petitioner shall continue to join the investigation as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.

It is made clear that if the petitioner fails to comply with any of the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioner.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.

The petition is accordingly disposed of.

24.02.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No