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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-19436-2022
Date of decision: 9th April, 2024

Akashdeep Singh ...Petitioner(s)
Versus
State of Punjab and another ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.S. Simble, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

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
136	29.06.2021	Civil Lines Batala, Police District Batala, District Gurdaspur	376 of Indian Penal Code, 1860 (for short ‘IPC’) and Sections 3 and 4 of POCSO Act, 2012 (Sections 328,34,450,376-D of IPC added later on)

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 statement recorded by the prosecutrix ‘P’ (name withheld) alleging therein that she was a fifteen years’ old girl studying in a local school. On 28.06.2021, at about 2:30 PM, she was alone in her house when one Vicky who was residing in her neighbourhood came to her house and asked for

cold water. When she went to kitchen to fetch water for him, he followed her and started doing indecent acts with her. She resisted but in the meanwhile, he put a handkerchief on her face, thereby, making her unconscious. On regaining consciousness after 3-4 hours, she found herself lying in the bed of a room of house of the said Vicky while having no wearing apparel on her body. She raised alarm, on hearing which her family members came there, whereas the accused Vicky managed to flee. She had become unconscious again. After registration of the FIR, investigation proceedings were initiated. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C. on 13.07.2021, wherein she stated that when the accused Vicky had committed rape upon her on 28.06.2021, after covering her face with a handkerchief and taking her to his house, at that time, the present petitioner and one Sukha were also with the said Vicky. On the basis of said statement, the present petitioner was nominated as an accused in this case.

3. As per the further allegations, subsequently the prosecutrix was stated to have sent a complaint to the SSP Batala on 02.09.2021, alleging therein that infact, it was one Bobby @ Kawaljeet Singh who had committed rape upon her on the pretext of performing marriage with her on 28.06.2021 and as his parents had assured thereafter that they would perform her marriage with Bobby @ Kawaljeet Singh and due to connivance of her own parents with parents of accused Bobby @ Kawaljeet Singh that she had taken the names of Vicky, petitioner-Akashdeep and Sukha. However, she recorded a statement on 21.05.2022 before the police, wherein she stated that complaint dated 02.09.2021 was not submitted by her. The petitioner

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moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Gurdaspur which was dismissed vide order dated 04.10.2021.

4. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he was not named in the FIR. He was implicated as accused on the basis of statement recorded by the prosecutrix after a gap of about one month from the date of alleged incident. No specific overt act had been attributed to him. In her complaint as moved to SSP, Batala and other higher authorities, she had admitted the fact that it was under the pressure of her family members that she had taken the names of Vicky and the petitioner and infact, it was one Bobby @ Kawaljeet Singh, who had ravished her. It is submitted that the allegations qua commission of offence of committing rape or administering any intoxicating substance or even trespassing into the house of the victim have not been levelled as against the petitioner. There is no medical evidence to support the allegations of rape. It is further argued that since his custodial interrogation is not required as he has already joined the investigation, therefore, the petitioner deserves to be given concession of pre-arrest bail.

5. Status report has been filed by respondent-State, as per which, in her statement recorded under Section 164 of Cr.P.C., the prosecutrix had taken name of the present petitioner. She also recorded in her statement before the Investigating Officer that no complaint on 02.09.2021 submitted by her before the SSP, Batala or other police officials authorities and she wanted to initiate the action on the basis of allegations levelled in the FIR. It

is argued by learned State counsel that the victim is yet to be examined. There are serious allegations against the petitioner as his complicity in the subject crime is made out from the statement of the prosecutrix as recorded under Section 164 of Cr.P.C.. Hence, it is urged by him that the petition does not deserve to be allowed. It is, however, admitted that the petitioner has joined the investigation.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

7. Though notice was issued to respondent No.2 but the same has been received back unserved with the report that she is not residing at the given address. The petitioner has joined the proceedings of the case. His custodial interrogation is no more required. He was not named in the FIR and was implicated as accused on the basis of statement recorded by the prosecutrix after a gap of fifteen days from the date of lodging of the FIR. There are no allegations against him that he had committed rape upon the victim or had administered some stupefying substance to her. Custodial interrogation of the petitioner is not required. No useful purpose would be served by detaining him in custody. Taking all these circumstances into consideration, I am of the considered opinion that the petition deserves to be allowed. Hence the same is allowed subject to compliance of the following conditions by the petitioner:-

- (i) He shall furnish requisite personal/surety bonds to the satisfaction of the Arresting officer/investigating officer

by appearing before him within a period of twenty days;

- (ii) He shall appear before the Investigating Officer as and when called and submit all documents and details as may be called upon by the investigating officer.
- (iii) He shall not tamper with the evidence or cause any threat or to any of the prosecution witnesses in any manner.
- (iv) He shall regularly appear before the Court on every date of hearing and also and when called upon to do so during the course of trial;
- (v) He shall not leave the country without prior permission of the trial Court.
- (vi) In the event of violation of any of the abovesaid terms, his bail shall stand automatically cancelled.

8. It is further clarified that the observations made above are only for the purpose of consideration of application for pre-arrest bail and the same shall not in any manner influence the trial. The trial Court shall consider the case on its merits and without being influenced by this order.

9. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

9th April, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |