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

CRM-M-20265-2024 (O&M)
Reserved on : 29.07.2024
Pronounced on : 09.09.2024

State of Haryana ...Petitioner

Versus
Rakesh ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Chetan Sharma, DAG, Haryana.

Mr. Pradeep Virk, Advocate (Amicus Curiae)

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. by the petitioner-State of Haryana seeking quashing of order dated 02.09.2023, passed by the Court of learned Additional Sessions Judge, Rohtak in CRR No. 70 of 2023, titled as *State of Haryana vs. Rakesh Phogat*, whereby order dated 13.06.2023, passed by the Court of learned Additional Chief Judicial Magistrate, Rohtak, granting bail to the respondent/accused for the offences punishable under Sections 323, 324, 506, 308 and 34 of IPC, had been affirmed, the revision petition was dismissed and direction was given to Superintendent of Police, Rohtak to ensure that Section 308 of IPC was not invoked in galore and on speculation.
2. Before addressing arguments, learned State counsel had restricted the prayer only to the extent of partial quashing of the impugned orders, passed by the Courts below, whereby directions were issued that provisions of Section 308 of IPC be not invoked without obtaining medical opinion from the medical officer concerned.

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3. The facts relevant for the purpose of disposal of the present petition are that the respondent, who is nominated as accused in the aforesaid case arising out of FIR No.378 dated 23.05.2023, registered under Sections 323, 324, 506 and 308 of IPC at Police Station City Rohtak, was arrested on 31.05.2023. He moved an application for grant of bail. It has appeared from the record that some direction had been given on 12.06.2023 by the Additional Chief Judicial Magistrate for giving medical opinion as to the nature of the injuries sustained by the injured/complainant. The said opinion was received on 13.06.2023, as per which, the injuries found on the person of the victim were opined to be simple in nature. By observing that the provisions of Section 308 of IPC were not *prima facie* attracted and the other offences, for which the respondent was booked, were bailable in nature, the application was allowed and the respondent was ordered to be admitted to bail. Feeling aggrieved from the said order to the extent to which bail was granted under Section 308 of IPC and certain observations were made by the Magistrate regarding invocation of Section 308 of IPC, the petitioner-State preferred the aforesaid revision petition before the revisional Court. The relevant part of the order dated 13.06.2023 making such observations is reproduced as under:

“Thus, without obtaining medical opinion before adding section 308 IPC, if the police produces the accused before the court, it will be treated by this court as an attempt to circumvent the authorities of Hon'ble Supreme Court of India in ***Arnesh Kumar vs State of Bihar*** and ***Satender Kumar Antil vs CBI***. In future, if the accused are produced in this manner, the necessary consequences may be suffered by the IO of the case as well as the SHO of the police station concerned. Copy of this order be sent to the SHO of

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all the police stations in the District Rohtak for information.”

4. As discussed above, the revisional Court affirmed the order passed by the Magistrate by making certain observations and by substituting the order of the Magistrate for giving directions to all the SHOs of Rohtak, thereby directing the Superintendent of Police, Rohtak to ensure that Section 308 of IPC was not invoked on speculations. The petitioner-State, feeling aggrieved from the impugned orders to the extent to which specific directions have been given to the police authorities to not to invoke Section 308 of IPC without having any medical evidence on record, has filed the present petition.

5. Learned State counsel, with the able assistance of learned Amicus Curiae, has argued that the Magistrate, while passing the impugned order dated 13.06.2023 in the petition for grant of bail, exceeded his jurisdiction by giving directions to the police, which even otherwise are erroneous and not sustainable in the eyes of law. It is further argued that while deciding the bail application and while affirming the said order, the Magistrate and revisional Court, respectively, issued direction thereby placing liabilities on the police authorities and curtailing the right of the investigating agency in a manner, which was not supported and sanctioned by law and, therefore, the directions given by the Courts below to the extent to which, the police authorities were directed to ensure that provisions of Section 308 of IPC should not be invoked till some medical opinion was received and invoking of such provisions will amount to committing grave error/illegality. To fortify his contention, learned State counsel has relied upon the authorities cited as ***State rep. by the Inspector of Police vs. M. Murugsen and another : 2020 (2) RCR (Criminal) 733, Munish***

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Bhasin & Others vs. State (Govt. of NCT of Delhi) and another : 2009 (2) RCR (Criminal) 247 and Sangitaben Shaileshbhai Datanta vs. State of Gujarat : 2018 SCC Online 2300.

6. I have heard learned State counsel as well as the Amicus Curiae and have also perused the material placed on record.

7. In ***M. Murugsen***'s case (supra), Hon'ble Supreme Court had observed that the jurisdiction to grant bail or not to grant bail pending trial was limited under Section 439 of Cr.P.C. In the said case, the following observations were made:

“11. We find that learned Single Judge has collected data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the Court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court.”

8. In ***Munish Bhasin***'s case (supra), Hon'ble Supreme Court had observed that while exercising discretion to release an accused on bail under Section 438 of Cr.P.C., neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. In ***Sangitaben***'s case (supra), the Hon'ble Supreme Court, while examining a question whether a Court after granting bail to an accused could pass an order to undergo scientific test for the

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accused or his relative in the form of lie detector, brain mapping and Narco analysis, observed that issuance of such directions by the Court was in contravention to the provisions of criminal law jurisprudence and violated the statutory requirements. In ***Sakiri Vasu vs. State of U. P. and others : 2008 (1) RCR (Criminal) 392***, Hon'ble Supreme Court has observed that the Magistrate has power under Section 156 of Cr.P.C. to issue direction for registration of FIR, monitor the investigation, order re-investigation and re-opening of investigation on submission of final report, if the investigation is not satisfactory. However, there is no law that a Magistrate can issue direction to the investigating agency to not to invoke a particular provision of law against the accused. The Magistrate can monitor the investigation to ensure a proper investigation but issuance any direction is not within the realm of its powers under Section 156 of Cr.P.C. as such powers do not affect the right of the investigating officer to conduct investigation and even further investigation.

9. In the present case, the Magistrate, while dealing with the application for grant of regular bail to the respondent chose to give direction to the concerned SHO for not registering any FIR under Section 308 of IPC until and unless medical evidence came on record. The Court of learned Additional Sessions Judge, Rohtak, while upholding the order of the Magistrate, substituted the same to the extent to which instead of issuing direction to SHO, such direction was issued to Superintendent of Police, Rohtak. In view of ratio of law as laid down in the afore-discussed authorities, this Court has no hesitation in saying that the Courts below obviously had acted beyond the jurisdiction vested in them. While passing the impugned order dated 13.06.2023, the Additional Chief Judicial Magistrate exceeded his jurisdiction vested in him to grant bail by

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issuing direction to SHO to not to invoke offence under Section 308 of IPC in the absence of any medical opinion and the revisional Court by upholding the said order, certainly contravened the basic principle of criminal law to the effect that power to conduct investigation vests in the police agency/investigating agency and the Courts of Magistrate are empowered only to the extent to which the monitoring of investigation/re-investigation or re-opening of investigation is concerned. As such, the impugned orders, passed by the Courts below, thereby issuing directions to the police authorities, are not sustainable and are liable to be set aside, to the extent to which the directions as mentioned above had been issued. Accordingly, the present petition is partly allowed and the aforesaid directions issued by the Courts below, with regard to obtaining medical opinion before invoking offence under Section 308 of IPC, are set aside.

09.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No