

280 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28482-2019
Decided on:-12.03.2024

Vikas SharmaPetitioner..

vs.

State of PunjabRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Karandeep Singh Sidhu, Advocate,
for the petitioner.

Mr. ADS Sukhija, Addl. Advocate General, Punjab.

Mr. H.S. Oberoi, Advocate,
for the complainant.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of anticipatory bail to the petitioner in FIR No.03, dated 01.05.2019, registered under Sections 377, 388, 389, 109, 115, 116, 120-B IPC, at Police Station State Special Operations Cell, SAS Nagar.
2. The petitioner has been nominated in the aforementioned FIR on the basis of statement made by complainant-Kiranbir Singh @ Jimmi s/o Manjit Singh as well as another inmate, namely, Brajesh Kumar Thakur. The relevant portion of allegations levelled against the petitioner in the aforementioned FIR as mentioned in the reply dated 18.10.2019 filed by the respondent-State through Mr. Vibhor Kumar (PPS), Deputy Superintendent of Police, Intelligence (OCCU), Punjab, SAS Nagar, is reproduced hereunder:-

“....He also gave Rs.1 lakh 10 thousand to Assistant Superintendent Vikas Sharma and 1 Lakh to Gunman of Rajan Kapoor Harjit Singh. The complainant Kiranbir Singh alias Jimmi also got recorded his statement U/s 164 Cr.P.C. before Ld. Judicial Magistrate.

5. *That Brijesh Kumar Thakur S/o Late Radha Mohan Thakur R/o House Pratah Kamal, Sahu road, Chhoti Kalyani, Muzzafarpur who was lodged in this jail on transfer from Bhagalpur Jail (Bihar) on the directions of the Supreme Court of India. He has also got recorded his statement that on 11 November 2018 (Sunday) in the early morning when he was present in his room (cell) in MP Ahata along with other inmates, Assistant Superintendent Vikas Sharma and Sukhjinder Singh along with some other officials entered into the room and asked fellow inmates Kuldeep Singh and other inmates to go out. In the meantime, two persons namely Goru Bacha and Amit Bhura and three other prisoners came to his room. They physically tortured, naked him and he was subjected to anal sex and oral sex by them and made videography of the whole incident and pressurized him to give money and threatened of dire consequences, if money was not paid. Gaurav Sharma alias Goru Bacha called through his mobile phone with the family members of Brijesh Kumar Thakur and asked Brijesh Thakur to tell them to give money to us. These persons again came next day to tortured him and forced him to talk with his family members to give money to their source who was outside the Jail. Somehow the family members of Brijesh Thakur managed to deliver Rs. 15 lakh (fifteen lakh) in Delhi through his daughter Nikita Anand. Statement of Brijesh Thakur was also recorded”*

3. Learned counsel for the petitioner submits that the petitioner has already joined the investigation and challan stands filed and as such custodial interrogation of the petitioner is not required at this stage. He also submits that in pursuance to a petition filed at the instance of Brajesh Kumar Thakur before the Hon’ble Apex Court, he was examined medically, but no injury mark was found on his person and, thus, the involvement of the petitioner in the FIR in question is highly doubtful.

4. On the other hand, prayer made herein has been vehemently opposed at the instance of learned State counsel while referring to the

serious allegations levelled against the petitioner, who being an Assistant Superintendent at Central Jail, Patiala, misused his official capacity/powers to physically torture Brajesh Kumar Thakur to extort money.

5. I have heard learned counsel for the parties and gone through the paper book.

6. The petitioner was implicated in the FIR in question on the basis of statement made by the complainant namely, Kiranbir Singh @ Jimmi and Brajesh Kumar Thakur, which has been extracted in the preceding para of the order, as per which, petitioner with the aid of other accomplices physically tortured Brajesh Kumar Thakur by giving him beatings, so as to extract money and also for extracting money from Kiranbir Singh for releasing him in pursuance to his parole. In this regard, said Brajesh Kumar Thakur even approached the Hon'ble Apex Court vide CWJC No.12845/2018, titled as "Nivedita Jha vs. The State of Bihar and others", wherein, the following order was passed on 06.12.2018:-

“UPON hearing the counsel the Court made the following
ORDER

Upon being mentioned at 12.55 p.m. taken on board.

Mr. Vikas Singh, learned senior counsel has placed before us a letter dated 6th December, 2018 purportedly written by Ms. Nikita Anand and Mr. Rahul Anand, children of Mr. Brajesh Kumar Thakur who has been transferred to Patiala Central Jail under the orders of this court.

In this letter, it is alleged that Mr. Brajesh Kumar Thakur is being tortured physically and mentally in the said Jail.

Keeping in view the allegations made in the letter, we direct the Superintendent of the Central Jail, Patiala to produce Mr. Brajesh Kumar Thakur before the Medical Superintendent, Rajindra Hospital, Patiala at 4.06 p.m. today. We also direct that

the Chief Judicial Magistrate or any other Judicial Magistrate authorized by him should be present in the Hospital at 4.00 p.m.

The Medical Superintendent, Rajindra Hospital, Patiala shall constitute a medical board who shall examine Mr. Brajesh Kumar Thakur and submit a report to this Court by Monday, 10th December, 2018.

The Secretary General is directed to convey these orders to the Superintendent of the Central Jail, Patiala, the Medical Superintendent, Rajindra Hospital and to the Sessions Judge, Patiala for onward transmission of this order to the Chief Judicial Magistrate, Patiala immediately.

List the matter on 10th December, 2018.”

7. Upon being medically examined in terms of order dated 06.12.2018, passed by the Hon’ble Apex Court, no injuries were found on the person of Brajesh Kumar Thakur and resultantly, the aforesaid petition was withdrawn vide order dated 10.12.2018, which reads as under:-

“The Medical Report, pursuant to our order dated 06.12.2018, has been received.

We have perused the Report and find that there is absolutely no injury caused to Mr. Brajesh Thakur.

No further orders are required to be passed on the basis of the letter filed by Mr. Vikas Singh, learned senior counsel on 06.12.2018.”

In view of the aforesaid, the allegations levelled by Brajesh Kumar Thakur regarding the involvement of the petitioner in the incident in question become prima facie doubtful and debatable.

8. Additionally, in the present case, vide order dated 09.07.2019, the petitioner was directed to appear before the investigating officer and to join the investigation. The said order is reproduced hereunder:-

“Prayer in this petition is for grant of anticipatory bail in FIR No.003 dated 01.05.2019 under Sections 377, 388, 389, 109, 115, 116, 120-B IPC, registered at Police Station State Special Operations Cell, SAS Nagar.

Learned counsel for the petitioner submits that the petitioner is working as Assistant Superintendent of Jail and relies upon the order dated 06.06.2019 passed in CRM-M-26326-2019, vide which, while granting interim anticipatory bail to co-accused Rajan Kapur, following order was passed: -

“Learned counsel for the petitioner inter alia contends that petitioner-Rajan Kapur, happens to be the Superintendent of Jail at Central Jail, Patiala, where high risk criminals/gangsters have been lodged and on account of strict vigil and action, against the errants, on the basis of the letter of the Assistant Director General of Police (Jails), Punjab by placing reliance on the letters vide Annexures P-3 to P-6 claims that the petitioner has been provided extra security as there is every likelihood of threat perception to his life as well as of his family members and that as a revenge, the gangsters have colluded and got a false case registered against the petitioner and nothing is to be recovered from him.

Notice of motion for 03.08.2019.

Meanwhile, in the event of arrest, the petitioner be released on interim bail to the satisfaction of arresting/Investigating Officer. The petitioner shall, however, join the investigation as and when called for to do so and he shall also abide by the conditions as envisaged under Section 438 (2) Cr.P.C.”

Notice of motion for 03.08.2019.

In the meantime, the petitioner is directed to appear before the Investigating Officer within a period of 10 days to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

- 1. He shall make himself available for interrogation by a*

- police officer as and when required;*
2. *He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
3. *He shall not leave India without previous permission of the Court.”*

In pursuance thereof, the petitioner has joined the investigation and even the final report already stands filed in the present case. Besides it, nothing has been pointed out or even made out from the facts that the custodial interrogation of the petitioner is required any further.

9. As regards the other allegation levelled against the petitioner of having demanded Rs.1.05 lakhs from one of the complainants, namely, Kiranbir Singh against his release on parole despite there being orders of the competent authority, for the said purpose, is concerned, the same remains a matter of trial as no direct prima facie evidence has been pointed out from the final report in this regard.

10. Thus, having considered the aforesaid facts and circumstances, the present petition is allowed and the order dated 09.07.2019 passed by this Court, is hereby made absolute. However, the petitioner shall keep on joining the investigation as and when required to do so and he shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

12.03.2024
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No