



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

201

CRM-M-30996-2024 (O&M)
Date of Decision: 13.11.2024

Hardeep Singh

.... Petitioner

Versus

State of Punjab and another

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Gurinder Singh Dhot, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

Mr. ADS Jattana, Advocate for the complainant.

NIDHI GUPTA, J. (ORAL)
CRM-32770-2024

Prayer in this application filed under Section 528 BNSS, 2023 is for seeking permission to implead the applicant/complainant Pxxx w/o Sh. Ajay Kumar, r/o H. No. 186-C, Platinum Homes, old Ambala Road, Dhakoli with MC Zirakpur, District SAS Nagar as respondent No. 2.

Notice of the application.

On the asking of Court, Mr. Gurinder Singh Dhot, Advocate accepts notice on behalf of the petitioner, whereas Ms. Guramrit Kaur, Deputy Advocate General, Punjab, accepts notice on behalf of respondent-State.

Heard.



For the reasons stated in the application, which is supported by an affidavit of the complainant, the same is allowed and the complainant is hereby impleaded as respondent No. 2. Amended memo of parties filed along with the application is taken on record. Office to tag the same at the appropriate place.

CRM-M-30996-2024 (O&M)

Prayer in the instant petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No. 187 dated 21.05.2024 registered under Sections 376, 506 IPC at Police Station Zirakpur, District SAS Nagar, Mohali (Annexure P-1).

On 03.07.2024, when this case was listed for hearing, following order was passed by this Court:-

“Prayer in the instant petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No. 187 dated 21.05.2024 registered under Sections 376, 506 IPC at Police Station Zirakpur, District SAS Nagar, Mohali (Annexure P-1).

Learned counsel for the petitioner inter alia submits that as per the writing in the FIR itself, the first incident of alleged rape committed upon the complainant by the petitioner pertains to January, 2022 and the last incident is of 20.05.2024. However, the FIR has only been filed on 21.05.2024 i.e. after 2 ½ years.

Learned counsel for the petitioner further submits that the petitioner is running a grocery shop from where the complainant used to regularly buy groceries. It is submitted that genesis of the dispute is that the complainant owed about Rs.3,60,000/- to the petitioner and when the petitioner demanded the said amount from the complainant,



she called the petitioner to a hotel on 20.05.2024, where in turn she demanded Rs.5,00,000/- from him. When the petitioner refused to pay the said amount to the complainant and exited the hotel, he was confronted by the husband of the petitioner alongwith some other persons, who inflicted injuries upon the person of the petitioner. In this regard, learned counsel for the petitioner refers to the discharge summary/MLR dated 20.05.2024 (Annexure P-3) wherein grievous injuries are shown upon the petitioner including “fracture ulna left with lacerated wound left leg”.

Learned counsel for the petitioner further submits that the entire incident has been caught in the CCTV camera of the hotel, where the petitioner was called by the complainant. In respect of the said incident, the petitioner has also submitted two representations dated nil, one being to the Senior Superintendent of Police, District SAS Nagar (Mohali) (Annexures P-4) and second being to the Deputy Superintendent of Police, Zirakpur (Annexure P-5). It is stated that the allegations made in the FIR are utterly false and fabricated and the petitioner is ready to join the investigation and cooperate with the investigating agency

Notice of motion.

Mr. Kunwarbir Singh, Assistant Advocate General, Punjab accepts notice on behalf of the respondent-State of Punjab. Mr. Sandeep Gahlawat, Advocate appears and files his Power of Attorney on behalf of the complainant in Court today which is taken on record.

Learned counsel for the complainant vehemently opposes prayer made on behalf of the petitioner and submits that the assertion of the petitioner that the complainant owed money to the petitioner is only a bald assertion with no proof in support. It is further submitted that the petitioner had been committing rape upon the



complainant for 2 years, during which time she was being pressurized and blackmailed by the petitioner. It is stated that the complainant has provided an audio clip of the petitioner to the investigating agency in which the petitioner can be heard threatening the complainant on the date of occurrence i.e. 20.05.2024.

Learned counsel for the State, on instructions from ASI Nirmal Singh, submits that the above-referred applications (Annexures P-4 and P-5) have been received and investigation is going on in the matter. The petitioner is yet to join investigation. It is further informed that an offence under Section 323 IPC has been added to the present FIR vide DDR No.38 dated 28.06.2024. It is also informed that as per the allegations in the FIR, the petitioner had impregnated the complainant however, the fetus was aborted. Learned counsel for the State accordingly prays that the petitioner be directed to undergo medical examination for proper investigation in the matter. Learned counsel for the petitioner submits that he has no objection in this regard.

In view of the facts as noticed above, the petitioner is directed to appear before the SHO/Investigating Officer on or before 18.07.2024 to join investigation and cooperate with the Investigating Agency. In the event of his arrest, he shall be released on interim bail on his furnishing bail bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C.

- i. that the petitioner shall make himself available for interrogation before the Investigating Officer as and when required;*
- ii. that the petitioner 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/her from disclosing such facts to the Court or to any police officer;

iii. that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.

Learned counsel for the State is directed to file an affidavit/status report as to the exact role of the petitioner alongwith the details of pending FIRs, if any, on or before the next date of hearing.

List on 13.11.2024.”

Learned counsel for the petitioner submits that in compliance of the order dated 03.07.2024 passed by this Court, the petitioner has joined investigation on 11.07.2024.

Learned counsel for the State files Status Report dated 12.11.2024 by way of an affidavit of the Deputy Superintendent of Police, Sub-Division Zirakpur, District SAS Nagar on behalf of respondent No.1-State of Punjab in Court today, which is taken on record. Copy thereof is supplied to the counsel opposite.

Learned counsel for the State, on instructions from ASI Labh Singh, submits that the petitioner has joined investigation on 11.07.2024 and is co-operating with the investigating agency, and no further interrogation is required, at this stage.

Learned counsel for the complainant vehemently opposes prayer made on behalf of the petitioner and submits that the facts as portrayed by the learned counsel for the petitioner at the time of grant of interim bail are false. Learned counsel submits that it has been falsely



stated by the petitioner that he had asked the complainant to clear her outstanding dues of Rs.3,60,000/-. It is contended that in fact, it is the petitioner who had demanded Rs.5,00,000/- from the husband of the complainant, out of which the complainant had given an amount of Rs.4,00,000/- to the petitioner of which Rs.2,00,000/- was paid vide cheque No.217930 dated 06.04.2022 from the account of the husband of the complainant. It is further contended that it is the petitioner who had continuously demanded money, gold and other rings from the complainant for him to utilize. On the date of incident i.e. 20.05.2024, the petitioner had even sent the Uber Driver for the complainant to come and recover her ring from Kauveri hotel; whereas, in the petition it has been wrongly alleged that petitioner was waylaid, as he had been called to the said hotel by the complainant and her husband on the said date along with some other persons. It is accordingly stated that the interim bail has been granted to the petitioner on incorrect premise.

Heard.

All of the above said submissions/assertions made by learned counsel for the complainant, are disputed questions of fact and are matters of investigation. Undisputedly, it has come on record that on 20.5.2024, as per the CCTV footage recovered from the Kaveri hotel where the complainant had accompanied the petitioner, the petitioner and the complainant could be seen exiting the hotel; whereupon they were waylaid by the husband of the complainant, and another person, who then inflicted grievous injuries upon the petitioner including fracture ulna left with lacerated wound in left leg.



Moreover, in a recent judgment rendered in **Jalaluddin Khan v. Union of India, (SC): Law Finder Doc Id # 2632933**, where in the accused petitioner had been charged under the stringent provisions of the **UAPA Act**, yet the Hon'ble Supreme Court held that: -

“When there is a case for grant of bail the court should not hesitate to grant bail. Allegations of the prosecution may be very serious, but the court's duty is to consider the case for bail in accordance with law. Now we have said that bail is the rule and jail is the exception is applied even to special statutes. If courts start denying bail in deserving cases, it will be a violation of rights guaranteed under Article 21,”

The Hon'ble Supreme Court has further ruled that:

““Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail”,

In view of the above, the order dated 03.07.2024 granting interim bail to the petitioner is made absolute.

However, the petitioner will abide by the conditions stipulated under Section 438(2) Cr.P.C. He will also join the investigation and cooperate with the investigating agency in case he is required for the same in future as and when called upon to do so.

In case at any given point of time hereinafter, it is felt by the



investigating agency that the petitioner is required for the investigation but is not cooperating, it will be at liberty to approach this Court for passing appropriate orders.

The petition stands disposed of.

Pending application, if any, stands disposed of.

13.11.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No