

**CRA-S-2270-2023 (O&M)****- 1 -****221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-2270-2023 (O&M)****DATE OF DECISION : 28.05.2024****DEEPAK KANSHAL @ DEEPAK @ SUNNY ... APPELLANT
V/S****STATE OF HARYANA & ANOTHER ... RESPONDENTS****CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN****Present: Mr. Ravinder Malik (Ravi), Advocate the appellant.****Mr. Kirpal Singh Thakur, AAG, Haryana.****Mr. Rajesh Goyal, Advocate for respondent No.2.***** * * *****HARPREET KAUR JEEWAN, J. (ORAL)**

1. The present appeal has been filed against the impugned order dated 10.8.2023 passed by learned Additional Sessions Judge, Panipat, whereby the application filed under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.668 dated 19.6.2023, under Sections 376(2)(n), 506 and 509 IPC and Sections 3 and 4 of SC/ST Act, 1989, registered at Police Station City, Panipat, has been dismissed.

2. On 21.08.2023 following order was passed by the Co-Ordinate Bench of this Court.:

“xxxx Learned counsel for the appellant has inter alia contended that perusal of the FIR reveals that it is a case of the complainant that the appellant by committing rape has made her pregnant. However, the said allegation is refuted by learned counsel for the petitioner and it is submitted that the appellant is falsely implicated in the present case as the appellant is medically unfit for making any woman pregnant since he is unable to produce sperm, which is quite clear from the Medical Report dated 05.8.2016 of the appellant, which is annexed with the appeal as Annexure A-2. It is submitted that the learned trial Court, while passing the impugned order, has ignored this very



CRA-S-2270-2023 (O&M)

- 2 -

vital fact.

Notice of motion for 06.12.2023.

In the meantime, the petitioner is directed to appear before the SHO/Investigating Officer to join investigation and 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.

Meanwhile, State counsel 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.”

3. Learned counsel for the appellant has reiterated the contentions raised in the order dated 21.08.2023 and further contends that the appellant has joined the investigation in compliance of the order passed by the Co-Ordinate Bench of this Court..

4. Reliance has been placed upon the latest judgments of Hon'ble the Supreme Court in Prithvi Raj Chauhan Vs. Union of India and others, reported as 2020(4) SCC 727, and Hitesh Verma vs. State of Uttarakhand reported as 2020 (4) RCR (Criminal) 868, to contend that in such like situation, the bar under Sections 18 and 18-A of the Act of 1989 would not apply.

5. Reliance has also been placed upon the judgment of Co-ordinate Bench of this Court in CRM-M-30576-2002 decided on



01.08.2002 titled as "Jagir Chand vs. State of Punjab" as well as in CRM-M-3956-2020 decided on 27.02.2020 titled as "Baljinder Kaur vs. State of Punjab" to contend that if the ingredients of the provisions of the Act are not met with, then the bar under Section 18 of the Act of 1989 cannot come in the way of the appellant being granted the concession of anticipatory bail.

6. Learned State counsel has also confirmed that the appellant has joined investigation. State counsel further informs that custodial interrogation of the appellant is not required.

7. Learned counsel appearing on behalf of respondent No.2 has opposed the bail application on the ground that there are specific allegations against the appellant.

8. The appellant has joined investigation. The allegations *inter se* the parties are a matter of trial.

9. In view of the reasons recorded in the order dated 21.08.2023 and in view the aforesaid facts, the present appeal is allowed and the order of dismissal of bail application on behalf of the appellant dated 10.8.2023 passed by the learned Additional Sessions Judge, Panipat, is set aside and order dated 21.08.2023 granting interim bail to the appellant is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

10. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

11. However, liberty is reserved in favour of the State/complainant to move for cancellation/recalling of the order in case

**CRA-S-2270-2023 (O&M)****- 4 -**

the appellant violates any condition stipulated under Section 438 (2) Cr.P.C., or upon showing any other sufficient cause.

12. All the pending miscellaneous applications, if any, shall stand disposed of.

28.05.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

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