

280 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41950-2019
Decided on:-12.03.2024

Sukhjinder SinghPetitioner..

vs.

State of PunjabRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagtar 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 one of the jail inmates, namely, Brajesh Kumar Thakur (confined in Central Jail, Patiala) with the allegations of having entered his room and given beatings. The extract of allegations levelled against the petitioner as detailed 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:-

“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 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 Goru Bacha called through his mobile phone the family members of Brajesh Kumar Thakur and asked Brajesh Kumar Thakur to tell them to give money. 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 Brajesh Thakur managed to deliver Rs. 15 lakh (fifteen lakh) in Delhi through his daughter Nikita Anand. Statement of Brajesh Thakur was also recorded. Therefore involvement of the petitioner come in this case”

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 complainant 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 complainant-Brajesh Kumar Thakur to extort money.

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

6. Although, petitioner has not been named in the entire FIR, however, his implication is based on subsequent statement of an inmate of Central Jail, Patiala, namely, 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 complainant-Brajesh Kumar Thakur by giving him beatings, so as to extract money. 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 4.00 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 doubtful.

8. Additionally, in the present case, vide order dated 18.10.2019, the petitioner was directed to appear before the investigating officer and to join the investigation. The said order is reproduced hereunder:-

“List again on 26.11.2019.

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. Having considered the aforesaid facts and circumstances, the present petition is allowed and order dated 18.10.2019 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
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(HARKESH MANUJA)
JUDGE

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