

CRM-M-50071-2023(O&M) -1-

211 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-50071-2023 (O&M)
Date of decision: 20th March, 2024

Bunty Singh
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Riffi Birla, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

CRM-11439-2024

This application has been filed by the applicant for placing on record the copies of zimni orders in compliance of order dated 07.03.2024

For the reasons mentioned in the application, the same is allowed. Zimni orders are ordered to be taken on record.

Main case

The present petition has been filed under Section 438 of Cr.P.C. seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Section(s)
244	04.12.2019	City-1, Abohar, District Fazilka	376 of Indian Penal Code, 1860 (for short ‘IPC’)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered by the

prosecutrix 'B' (name withheld) alleging therein that her husband was a driver by profession and used to visit his house after a gap of several days. She used to live with her four children. On the intervening night of 26/27.11.2019, while she was sleeping in her house alongwith her children, the present petitioner and the co-accused jumped over the wall of her house and entered therein. On hearing some noise, she had woken up but was caught hold by the petitioner and co-accused who by throwing her on her bed and covering her mouth with a cloth, committed rape upon her one by one and thereafter went away while extending threats to face dire consequences, if she disclosed about the incident to anybody. Her husband came back home on 27.11.2019 and the entire incident was told by her to him. She was taken to hospital on 28.11.2019 but her medical examination was conducted on 01.12.2019. On the basis of her statement, initially a case under Section 376 of IPC was registered. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C. Offence under Section 450 of IPC was added. The accused Kuldeep Singh was arrested. The present petitioner was found to be innocent during investigation. Challan was presented against accused Kuldeep Singh and trial against him commenced. During trial, an application under Section 319 of Cr.P.C. was moved by the prosecution which was allowed vide order dated 24.08.2023 and the present petitioner was ordered to be summoned as additional accused to face trial alongwith the co-accused.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely

implicated in this case. There is delay in lodging of the FIR which has not been specifically explained. After conducting thorough investigation in the matter, he had been found to be innocent by the investigating agency and had not been arrested and challaned. He has been summoned under Section 319 of Cr.P.C. His custodial interrogation is not required. Neither any recovery is to be effected from him. Just after receiving notice by the trial Court showing that he had been summoned as an accused in this case, he had moved this petition seeking grant of anticipatory bail. However, nonetheless, he has been declared a proclaimed person vide order dated 15.01.2024 by the learned trial Court which order is not sustainable. Therefore, it is argued that he deserves to be given concession of anticipatory bail and the application filed by him is still maintainable.

4. Status report has been filed by respondent-State, as per which, though he was named in the FIR but during enquiry, he was found to be innocent and was summoned by the trial Court on allowing application under Section 319 of Cr.P.C. However, learned counsel for the respondent-State has argued that since the petitioner has been declared a proclaimed person on 15.01.2024, therefore, this application cannot be stated to be maintainable.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. It is admitted case of the parties that the petitioner was found to be innocent during enquiry and had not been arrested and challaned. It is

after passing of an order dated 24.08.2023 by the learned trial Court, in an application filed under Section 319 of Cr.P.C. that he has been ordered to be summoned as an additional accused. The custodial interrogation of the petitioner is of-course not required. Nor it is a case where it could be stated that some recovery is to be effected from him. The only point that remains for consideration is as to whether in view of the fact that he has been declared a proclaimed person by the learned trial Court during the pendency of the present petition, this application held to be maintainable or not?

7. It is apparent from the record that the instant petition had been filed by the petitioner as on date 29.09.2023 i.e. much before the passing of order dated 15.01.2024 passed by learned trial Court thereby declaring him a proclaimed person. At the time of filing of the anticipatory bail application on 29.09.2023, the present petitioner was not a proclaimed person. Therefore, in the considered opinion of this Court, the bar imposed on allowing the petition of anticipatory bail of a person declared as a proclaimed person cannot apply to the present case and therefore, this petition can be heard and disposed of by this Court. In this regard, this Court places reliance upon the judgment cited as '*Suresh Babu Vs. State of U.P. and another, 2022(8) ILR (Allahabad) 442*', wherein similar observations were made by Allahabad High Court. At the cost of repetition, it is stated that the as custodial interrogation of the petitioner is not required and he has been summoned on allowing of an application under Section 319 of Cr.P.C., therefore, no useful purpose would be served by detaining him in custody.

Accordingly, the petition is allowed, the petitioner is directed to surrender

before the learned trial Court within a period of twenty days from the date of passing of this order and on his surrender within that period, he shall be released on bail by the learned trial Court on furnishing bonds to its satisfaction.

[MANISHA BATRA]
JUDGE

20th March, 2024
Parveen Sharma

1. Whether speaking/ reasoned
- :
- Yes / No
2. Whether reportable
- :
- Yes / No