

207 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56298-2023
Date of decision: 13th February, 2024

Babu Singh

...Petitioner(s)

Versus

XXX

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Prabhjot Singh, Advocate for the petitioner.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C. by the petitioner seeking grant of anticipatory bail in case bearing Complaint No. COMI-26/2018 dated 25.05.2018 registered under Section 376 of Indian Penal Code, 1860.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent-complainant (name withheld) has filed aforementioned criminal complaint on 25.05.2018 as against the petitioner on the allegations that on the intervening night of 13/14.09.2017, she alongwith her husband, mother-in-law and sister-in-law was sleeping in her house. At about 1:00 AM, she had woken up for using the washroom when the petitioner who was under the influence of liquor reached there with one unknown person who had muffled face. The petitioner after closing the mouth of the respondent-complainant forcibly, dragged her outside and

committed rape upon her whereas the unknown person kept standing there to keep guard. The respondent then raised alarm and on hearing the same, her husband had woken up. The petitioner and his accomplice ran away from the spot. The complainant alleged that she had reported the matter to the police but no action was taken. Hence, she had filed the aforementioned complaint. After recording the preliminary evidence, learned trial Court had issued process as against the present petitioner thereby calling upon him to appear as an accused and to face trial for commission of offence punishable under Section 376 of IPC.

3. The present petition has been filed by the petitioner seeking pre-arrest bail on the grounds and it is submitted by his counsel that he has been falsely implicated in this case. The respondent had reported the matter to the police only on 24.09.2017, i.e. after a delay of ten days. The police had made due inquiry/investigation in the matter and had found the story of the respondent to be completely false and that is why no action was taken as against the petitioner. It is also submitted that there are inconsistencies in the statement of the respondent recorded before the police as on 24.09.2017 as well as her statement and the allegations as levelled in her complaint which also falsify her version. There has been no independent witness to support the case of respondent. The custodial interrogation of the petitioner is not required. He has already joined proceedings before the learned trial Court. No useful purpose would be served by detaining him in custody. Therefore, it is argued that the petition deserves to be allowed.

4. It will not be out of place to mention here that on 08.11.2023,

the petitioner was ordered to be admitted to interim bail subject to his surrendering before the concerned Court on or before 16.11.2023 and furnishing bonds to its satisfaction.

5. Learned counsel for the petitioner has also placed on record a copy of order dated 16.11.2023 showing that the petitioner had appeared before the Court of learned Illaqa Magistrate on that date and furnished bonds to his satisfaction. It will not be out of place to mention here that notice of the petition was given to the respondent and she was duly served but none has put in appearance on her behalf.

6. I have heard learned counsel for the petitioner at considerable length and have gone through the record carefully.

7. The petitioner has been ordered to be summoned as an accused in a private complaint case as filed by the respondent. As per the allegations in the complaint, he had committed rape upon the victim as on the intervening night of 13/14.09.2017. However, learned counsel for the petitioner has also placed on record Annexure P-3 which is copy of statement recorded by the police showing that in the said statement, she had recorded that it was intervening night of 12/13.09.2017, when she had woken up at 1:30 AM and was easing herself in the courtyard when the petitioner and another unknown person had reached and the petitioner after closing her mouth had committed rape upon her. Therefore, there appears to be inconsistencies in the statement as recorded by the respondent before the police and as levelled in the complaint. Further, another inconsistency which is pointed out is that in her statement Annexure P-3, she is shown to had

stated that the present petitioner had committed rape upon her in the courtyard itself, whereas, as per the allegations in the complaint, he had dragged her out of the house and then had ravished her. The petitioner has already surrendered before the trial Court. Being a private complaint case, neither his custodial interrogation is required nor any recovery is to be effected. His detention in custody as such would not served any useful purpose. Taking an overall view of circumstances, the order dated 08.11.2023 as passed by this Court for directing the petitioner to surrender before the committing Court/Illaqa Magistrate and then his being admitted to bail, subject to his furnishing bonds deserves to be made absolute. Accordingly, the petition is allowed and the order dated 09.11.2023 is made absolute, subject to compliance of provisions of Section 438(2) of Cr.P.C. .

[MANISHA BATRA]
JUDGE

13th February, 2024
Parveen Sharma

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