

2024.PHHC:160691



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

CRM-M-52940-2024
DECIDED ON: 23.10.2024

SUKHPREET SINGH @ SUKHU @ SUKH

... PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ramnish Puri, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

CRM-42239-2024

Prayer in the present application is for exemption from filing the
certified and typed copy of Annexures.

Application is allowed, as prayed for.

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C. has been
invoked 2nd time for the grant of pre-arrest bail to the petitioner in case FIR No.
17, dated 02.03.2024, under Sections 341, 323, 328 and 34 of the Indian Penal
Code, 1860 (hereinafter referred to as 'IPC') (Section 376 IPC added later on)
registered at Police Station Mehna, District Moga.

2. **Facts**

The facts as narrated in the FIR reads as under:-

“Statement of Neetu alias Pinky daughter of Charan Singh son of Niranjan Singh resident of Jeevan Singh Nagar, Street No. 6, Ward No. 3, Kotakpura at present resident of near Doda Sweet Opposite Street, Street No. 2, Kotakpura District Faridkot aged about 25 years mobile No. 98729-87355 stated that I am resident of above mentioned address and we are 5 siblings. We are 3 sisters and 2 brothers. I am eldest among all and my father is doing the work of labour and my mother remained ill. My marriage was solemnised about 7 years ago in the year 2017 with Amritpal Singh son of Chamkaur Singh resident of Bathinda and from the said marriage I am having 2 children. But due to temperamental differences between us, the matrimonial case has been discharged by the Women Cell, Bhatinda with our mutual consent. As I am having two children with me, therefore, it is very difficult to meet both the ends and therefore I came to Bus Stand Moga in search of work and there I got Mobile No. of Arashdeep Singh son of Pavittar Singh resident of Bhinderkalan Patti Sariyan, District Moga whose Mobile No. is 96531-04152, who called me inside the bus stand after finding me standing and asked me from where you belongs and during the conversation he took my mobile number and thereafter, when returned to my village Kotakpura then for 10/15 days talked with Arsh being a friend and he told me on telephone that he is having a hotel Darshan at Bhaghapurana Chowk. He also ensured that he will provide me a job of manager at his hotel and therefore, I joined on the post of Manager at hotel Darshan on the asking of Akashdeep where for one month Arshdeep got work of manager from me and thereafter, Arshdeep told me that he wants to marry me and therefore, after believing the words of Arshdeep, I started living in the hotel, after taking me in his confidence he made physical relations with me and also given me one intoxicant tablet on which I told Arshdeep that due to tablet I feel anxiety and feel headache despite that he used to give me one tablet brought by his friends Garry and Harman and told me that after taking this medicine, you will! not feel headache. At that time all these three were present in the room and when I took the tablet I became unconscious and when I regain the consciousness then I found that I was naked and Garry, Herman and Arshdeep were sitting beside me and when I asked with regard to my this condition than they all started laughing and also blackmailed me by saying that in case you will not made physical relations on our asking

then they will put your video on internet. Thereafter I under fear made physical relations with different persons and during this time because Arshdeep also used to made physical relations on daily basis and due to this I got pregnant twice. Thereafter, the friends of Arshdeep namely Garry and Harman has given abortion tablets to me in drinks. Thereafter, they have manhandled with me on 05.02.24 and thereafter I called on 112 helpline and informed them everything. Lateron we have entered into a compromise and Arshdeep assured me that he will solemnise marriage with me. But now Arshdeep Singh and his friend Garry alias Gagan and Harman started threatening me that they will eliminate me or else return to your home at Kotakpura leaving the Hotel and then on 25.02.24 in the morning at 10:00a.m. S.I. Baljinder Singh told me that a complaint has been received against you at Police Station Mahna from Garry Alias Gagan and you have to come present in the police station at 4:00p.m. When at 4:00p.m. I went to Police Station Mehna, Arashdeep and Harman came and there is verbal altercation took place between us and thereafter, I returned to Hotel Darshan where they came to follow me at hotel and started assaulting me and when I tried to ran away from the spot than one boy namely Sukhu called me at hotel and manhandled with me during that time they have switched off the CCTV camera of the hotel and also snatched my phone and I am having my purse with me in which there was Rs.15,000/- and keys of almirah. After snatching the purse from me they started committing theft of the money from almirah which were about one lakh Rupees are there and as I am all alone and they were four persons. they have beaten me and forcibly made me to drink Phenyl and at that time my friend Karamjit Kaur came at the spot and: after seeing her all the above named accused ran away from the spot. My friend Karamjit Kaur after making arrangement of the vehicle removed me to Civil Hospital, Moga and got me admitted there where I remained admitted from 25.02.24 to 01.03.2024 and thereafter I got myself discharge with my free will and went to the house of my friend Karamjit Kaur and today on 02.03.2024 got recorded my statement after visiting the Police Station. On these allegations the present FIR got registered.”

3. Submissions

On behalf of the petitioner:

Learned counsel for the petitioner has submitted that earlier the petitioner has been granted the concession of interim bail by this Court vide order dated 01.04.2024, which was subsequently made absolute vide order dated 15.05.2024. However, vide GD No. 39, dated 30.50.2024, the investigating agency has enhanced the offence under Section 376 IPC. From the bare perusal of FIR, offence under Section 376 IPC is not made out against the petitioner. It is further submitted that the entire incident has been recorded in the CCTV footage and the case is based upon the scientific evidence.

Notice of motion.

On behalf of respondent-State

On the asking of Court, Mr. Rajiv Verma, DAG, Punjab, appearing on advance notice, accepts the same on behalf of respondent-State. Learned State Counsel would argue that the allegation against the petitioner is serious thus, custodial interrogation of the petitioner would be required to culminate the investigation into a logical end. Accordingly, prayer for dismissal of the present petition has been made.

Heard learned counsel for the respective parties.

4. Analysis and conclusion:

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

It is undeniable that initially FIR was registered under Sections 341, 323, 328, and 34 of the Indian Penal Code wherein, the petitioner was

granted interim bail by this court, but later on, Section 376 of the IPC was added based on the victim's allegation. The petitioner is specifically accused of striking the victim and forcing her to take phenyl with the help of his co-accused. He is also accused of engaging in sexual intercourse with her based on a fictitious marriage proposal.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the

accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

23.10.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No