

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

206

CRM-M No.61168 of 2022  
Date of decision: 05.02.2024

Gurtej Singh

... Petitioner

Vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Deepak Aggarwal, Advocate,  
for the petitioner.

Mr. P.S. Pandher, AAG, Punjab.

Mr. Judgepreet Singh Warring, Advocate,  
for the complainant.

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**MANISHA BATRA, J.**

1. The instant petition has been filed by the petitioner under Section 438 of Cr.P.C. seeking grant of anticipatory bail in case bearing FIR No.163 dated 12.10.2022 registered under Section 376-D of IPC at Police Station Sadar, District Bathinda.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of statement recorded by the prosecutrix "B" (name withheld) alleging therein that she used to work as a cook in the marriages. On 29.09.2022, she along with some other ladies was cooking food at a bhandara of Mandi Baba at Village Narwana when the co-accused Jeet Singh came to her and asked her to do cooking work in the marriage of

his son that was shortly going to take place. He also gave his mobile number to the prosecutrix. On 09.10.2022, at about 10-11 AM, he made a call to her thereby asking her to come to his house to have conversation with his wife regarding the work of cooking which was to be done in the marriage of his son and also told that he would take her from Dana Mandi. He also told her that he would be making payment in advance for that purpose. Believing the co-accused Jeet Singh, the prosecutrix accompanied him on his motor cycle. However instead of taking her to his house, he took her to his fields situated at Village Baho Sivian and then to the kotha of tubewell existing therein, wherein he offered water to her to drink on consuming which, she lost her consciousness. She alleged that the present petitioner was already present there and by telling him to stand guard outside the tubewell kotha, the co-accused Jeet Singh committed rape upon her. She was not in her full senses. Thereafter, the co-accused Jeet Singh called the present petitioner who too ravished her and then both of them left her there alone. She called one B. Kaur wife of A Singh (name withheld) on her mobile phone who took her to Civil Hospital, Bathinda wherein she was medically examined and had gone to her house. She further recorded that as she was not feeling well on the previous day, therefore, she was recording her statement on that day. On the basis of this statement, the aforementioned FIR was registered. Investigation proceedings were initiated. The prosecutrix was medico legally examined. Her statement under Section 164 Cr.P.C. was recorded on 13.10.2022. The co-accused Jeet Singh was arrested on 10.07.2023.

He was medico legally examined. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C was presented as against the co-accused Jeet Singh.

3. It is submitted in the petition and learned counsel for the petitioner has argued that he has been falsely implicated in this case. He is a person having good reputation in the village and even his daughter is married. The prosecutrix has formed gang with some other females including B.Kaur who was also named as a witness in this case and by implicating innocent persons in false cases like the present case, they have been extracting money from them. It is submitted that during the course of trial which is going on as against the co-accused Jeet Singh, the prosecutrix has recorded her statement as on 05.12.2023 and in the said statement, she has resiled from the version as given in the FIR as well as in her statement recorded under Section 164 of Cr.P.C. and has not implicated him in the subject crime at all. He has further submitted that even the witness B.Kaur who was named in the FIR as the person who had taken the prosecutrix from the place of occurrence to the hospital is not having clean antecedents and has been involving innocent people in false cases of rape. He has brought the attention of this Court to Annexure P-5 copy of statement of the prosecutrix as recorded in the trial which is separately going on as against the co-accused Jeet Singh in this very case as well as Anneuxre P-2 which is copy of FIR No.73 dated 24.12.2021 registered under Sections 376, 506 and 560 of IPC at Police Station GRP, Bathinda, District Government Railway Police, on the basis

of statement of B.Kaur i.e. eye witness of this case making allegations of her being ravished by one Ravinder Suber @ Ravindra Suther and Annexure P-3 copy of judgment of acquittal of abovesaid Ravinder Suber @ Ravindra Suther in the same case. A perusal of contents of the judgment of that case reveals that the witness of this case namely B.Kaur who was prosecutrix in that case, had turned hostile. With these broad submissions, it is argued that the custodial interrogation of the petitioner is not required as no case of rape has been made out as against the petitioner. He is ready to join the investigation and hence it is urged that he deserves to be given benefit of pre arrest bail.

4. As per the status report filed by the respondent-State, there were specific allegations as against the petitioner as well as the co-accused Jeet Singh who had already been arrested and had been sent for facing trial. While admitting that the material witnesses have not supported the prosecution version and that the co-accused Jeet Singh who had been facing trial on the same allegations, has since been acquitted, learned State counsel has nonetheless submitted that since there are serious allegations against the petitioner, therefore, his custodial interrogation is required and hence, has urged that the petition be dismissed.

5. Learned counsel for the complainant did not choose to address any argument despite being present in the Court.

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

record carefully.

7. As per the allegations as levelled in the FIR, as on 09.10.2022, the co-accused Jeet Singh had taken the prosecutrix to a kotha/room of tubewell built in his fields on the pretext of making her meet his wife for the purpose of doing cooking work in the marriage of his son and had subjected her to rape whereas the present petitioner had stood guard and then the present petitioner had ravished her. Anneuxre P-5 is copy of the statement of the prosecutrix as recorded in the trial which was going on as against the co-accused Jeet Singh @ Jagjeet Singh qua the FIR of this case only and a perusal of the same has revealed that she deposed before the learned trial Court that on 09.10.2022, she had developed sexual relationship with the co-accused Jeet Singh @ Jagjeet Singh as per her own consent and will and was not subjected to rape. She identified her signatures on her statement as recorded under Section 164 of Cr.P.C. but is shown to have stated that the same was recorded under the pressure of police. It is also revealed that though she stated that she knew the present petitioner but denied that she had made any complaint that the present petitioner was also called by the co-accused Jeet Singh at the spot of occurrence and was asked to keep an eye outside the tubewell room or that he had also subjected her to sexual intercourse against her wishes and then he along with the co-accused had left her at the spot. She has even denied that she had made call to the witness B.Kaur and it was she who had taken her to the hospital. Then Anneuxre P-6 is copy of judgment of acquittal dated 05.12.2023 of the abovesaid Jeet Singh in the

same FIR which is the subject matter of this case. It is crystal clear from the above that the prosecutrix in the trial which has been conducted as against the co-accused, has not only exonerated him but the petitioner as well from the charge of rape.

8. Not even this, it is also revealed from a perusal of the Anneuxre P-2 copy of FIR No.73 dated 24.12.2021 and Annexure P-3 copy of judgment dated 29.04.2022 that the witness named by the prosecutrix has also been implicating other persons on the allegations of rape. In view of the discussion as made above, this Court is of the opinion that prima facie no case for commission of offence of rape has been made out as against the present petitioner. As such, it is fit case to extend benefit of anticipatory bail to the present petitioner as neither his custodial interrogation is required nor any recovery is to be effected from him and also in view of the fact that the co-accused who was facing trial on the same allegations has since been acquitted of the same charge and in that case, the prosecutrix has also denied that the present petitioner had committed any offence of rape with her. With these observations, the petition is allowed. The petitioner will surrender before the Investigating/Arresting Officer to join investigation within one week and thereafter as and when required. In the event of his arrest, the Investigating/Arresting Officer shall release the petitioner on bail on furnishing personal/surety bonds to his satisfaction. The petitioner shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C. and also further subject to the following conditions:-

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(i) The petitioner shall cooperate with the investigation and shall appear before the investigating agency as and when required.

(ii) He shall not directly or indirectly make any inducement, threat or promise to the prosecution or any other 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) He shall not commit any similar offence while on bail.

9. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

10. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

05.02.2024  
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(MANISHA BATRA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |