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IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-59978-2024 (O&M)
Date of Decision: 17.12.2024

HAPPY RAI

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Arzoo Modi, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is second petition filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) seeking anticipatory bail in FIR No.104 dated 28.10.2024 under Section 376 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Sadar Phagwara, District Kapurthala.
2. On 29.11.2024, following order was passed:

“This is second petition filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) seeking anticipatory bail in FIR No.104 dated 28.10.2024 under Section 376 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Sadar Phagwara, District Kapurthala.

The first petition i.e. CRM-M-59252-2024 was dismissed as withdrawn on 27.11.2024, as some typographical mistake had crept in, in the head note and prayer clause of the said petition and liberty was granted to file a fresh petition on the same cause of action with better particulars.

Learned counsel for the petitioner, inter alia, contends that the complainant is a matured lady of 42 years of age and she was in consensual relationship with the petitioner and there is nothing on record to remotely suggest that consent of the prosecutrix was obtained under some misconception as provided under Section 90 of IPC (now Section 28 of Bharatiya Nyaya Sanhita, 2023). It is further contended



that custodial interrogation of the petitioner is not required, as he has already joined the enquiry before the jurisdictional police authorities.

Notice of motion for 17.12.2024.

Keeping in view the ratio of law enunciated by the Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273, Arnab Manoranjan Goswami Vs. State of Maharashtra, (2021) 2 SCC 427, Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51, Siddharam Satlingappa Mhetre Vs. State of Maharashtra and ors., 2010 SCC OnLine SC 1375 and Shri Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565, the petitioner is directed to appear before Investigating Officer on or before 06.12.2024 at 10.00 a.m. and thereafter, as directed by the Investigating Officer. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing bail/surety bonds to the satisfaction of Investigating/Arresting Officer and the petitioner shall co-operate in the investigation. The petitioner shall cooperate with the investigation/Arresting Officer and abide by the conditions as provided under Section 482(2) of BNSS (erstwhile Section 438(2) of the Code of Criminal Procedure, 1973).

If the Arresting Officer does not permit the petitioner to join the investigation, he would appear before learned Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in the investigation, in terms of the order of this Court.

Nothing observed hereinabove shall be construed as an expression of opinion by this Court and learned trial Court shall decide the same on its own merits, strictly in accordance with law."

3. Learned State counsel on instructions from SI Kamaljeet Singh, submits that in compliance of order dated 29.11.2024 passed by this Court, the petitioner has joined the investigation and is not required for further custodial interrogation.

4. Keeping in view the statement made by learned State Counsel the order dated 29.11.2024, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 438(2) of Cr.P.C./482(2) of B.N.S.S.

5. The petition is accordingly disposed of.

17.12.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>