



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CRM-M-50820-2024 (O&M)

Date of Decision: 22.01.2025

KHALID SAIFULLAH

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Madan Sandhu, Advocate,
Mr. Sidharth Choudhary, Advocate and
Mr. Priyank Tiwari, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

KIRTI SINGH, J. (Oral)

1. Apprehending his arrest the petitioner has filed this petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail in case bearing FIR No.136 dated 13.09.2024 under Sections 313, 376(2)(N), 354-C and 506 IPC registered at Police Station Women West Gurugram, Gurugram.

2. The following order was passed on 12.11.2024:-

“Prayer in the 1st petition filed under Section 482 of BNSS, 2023 is for grant of anticipatory bail to the petitioner in case FIR No. 136 dated 13.09.2024 under Sections 376(2)(N), 313, 354-C, 506 IPC registered at Police Station Women West Gurugram, District Gurugram.

Office report shows that notice could not be issued to respondent No.2 for want of process fee. However, learned counsel for the petitioner has produced a receipt in respect of the process fee filed by the petitioner on 22.10.2024.

Learned counsel for the petitioner inter alia submits that as has been admitted by the complainant/respondent No.2 in the FIR itself, the complainant and the petitioner were in a live-in relationship since 03.03.2023 till 12.05.2024. It is submitted that despite this, it has been alleged in the FIR that the petitioner had initiated physical relations with the complainant on the pretext of marriage. It is contended that a consensual relationship between two consenting adults - which in the present case are the petitioner and the complainant - does not constitute offence of rape. In support, reliance has been placed upon a judgment of Hon'ble Supreme Court passed in Criminal Appeal No. 3431 of 2023 titled as 'xxxx vs. State of Madhya Pradesh and another, decided on 06.03.2024; and a



recent judgment of the High Court of Allahabad in Shrey Gupta vs. State of U.P. and another, Neutral Citation No. 2024:AHC:161316.

It is further submitted that at the relative time the complainant was major being more than 18 years of age. Moreover, the complainant is an educated and working woman who is employed in a MNC, and she is very well aware of what she was doing. The complainant and the petitioner had met through mutual friends. As such, complainant was also very well aware that petitioner was going through divorce proceedings with his previous wife; and that in February 2024, the petitioner has been granted divorce from his previous wife. It is submitted that however, the complainant has a temperament and anger issues, which is why the relationship between the complainant and the petitioner had soured resulting in the present FIR has been registered.

Learned counsel for the petitioner undertakes that the petitioner is ready to join investigation as and when required and shall cooperate with the investigating agency.

Learned counsel for the State opposes prayer made on behalf of the petitioner and on instructions from L/SI Vineet, submits that first date of incident as per FIR is 15.03.2023; and the last date of incident as per MLR is 25.08.2024. It is submitted that FIR was registered on 13.09.2024 and as such, MLR was conducted on 14.09.2024. However, due to delay in registration of FIR, no samples were collected from the complainant. It is submitted that the complainant had made allegations under Section 313 IPC however, when she was questioned by the Investigating Agency regarding medical documents in respect of the same, the complainant had admitted that she possessed no documents regarding abortion. It is submitted that photos and videos have not been recovered from the petitioner as he has not yet joined investigation.

Learned counsel for the State files Status Report dated 08.11.2024 by way of an affidavit of the Assistant Commissioner of Police, CAW, Gurugram on behalf of respondent No.1-State of Haryana in Court today which is taken on record. A copy thereof is supplied to the counsel for the petitioner.

In view of the facts as noticed above, the petitioner is directed to appear before the SHO/Investigating Officer to join investigation and in the event of his arrest, he will be released on interim bail on his furnishing bail bonds to the satisfaction of SHO/Investigating Agency, subject to the following conditions as envisaged under Section 438(2) Cr.P.C.:-

- i. that the petitioner shall make himself available for interrogation before the Investigating Officer as and when required;*
- ii. that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any 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. that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.*

*Let fresh notice be issued to the respondent No.2, for 22.01.2025.
Dasti as well."*

3. Learned State counsel on instructions from SHO Neha Rathee submits that in compliance of order dated 12.11.2024, the petitioner has joined the investigation and is not required for any further investigation.

4. Having considered the aforesaid facts and circumstances, the petition is allowed. Order dated 12.11.2024 passed by this Court, is hereby made absolute.

5. This order should not be treated as "blanket" order. It will not be read granting the petitioner indefinite protection from arrest. It shall be



confined to the FIR mentioned ibid and will not operate in respect of any other incident that involves commission of an offence.

6. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency to investigate into the charges against the petitioner.

7. The accused/petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him or her from disclosing such facts to the Court or to any police officer.

8. The accused/petitioner shall not leave India without prior permission of the Court.

9. The accused/petitioner shall join the investigation as and when called by the police.

10. It will be open to the police or the investigating agency to move to this Court for a direction under Section 483(3) of BNSS (erstwhile Section 439(2) of the Code of Criminal Procedure, 1973) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.

Pending application(s), if any, also stands disposed of accordingly.

22.01.2025
Kavita

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No