
(2020) 08 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 19191, 19836 Of 2020

Gopal Singh

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 109, 120B, 376, 376(2)(N)
Information Technology Act, 2000 — Section 67, 67A
Code Of Criminal Procedure, 1973 — Section 82, 83

Citation : (2020) 08 P&H CK 0078

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Preetinder Singh Ahluwalia, R.S. Thind

Judgement

Amol Rattan Singh, J

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On August 10, 2020, the following order had been passed:-

"All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

Vide CRM-M-19191 of 2020, the petitioner seeks quashing of the order dated 05.12.2017 (Annexure P-8), whereby he has been declared to be a 'Proclaimed Person', upon FIR no.46, dated 24.03.2017, having been registered at Police Station Sadar, Samana, District Patiala, alleging therein the commission of offences punishable under Sections 376(2) (N) and 109 read with Section 120-B of the IPC, as also under Sections 67 and 67-A of the Information Technology Act, 2000.

Vide CRM-M-19836 of 2020, the petitioner seeks the concession of 'anticipatory bail', in the context of the same FIR registered.

Mr. Ahluwalia, learned counsel for the petitioner, submits that the petitioner having gone to the UAE on March 18, 2017 and having returned only in March 2020, with the FIR itself having been registered on March 24, 2017, even the action of showing the petitioner to have been declared a proclaimed offender, is wholly fraught with malafides because obviously he was shown to be served of the notice issued under Section 82 of the Cr.P.C. in his village only thereafter, and therefore he deserves the concession of bail on that very ground, other than the fact that though he is ready to face trial, even in the judgment acquitting his co-accused, i.e. his family, of the offence punishable under Section 376 of the IPC, the trial court has observed that actually the petitioner committed no rape and if any intercourse took place, it was wholly by consent.

Learned State counsel however submits that the petitioner being the main accused, he cannot take the shelter of his co-accused having been acquitted. He seeks still further time to file a reply to the petition.

Without making any comment on the actual merits of what has been contended before this court, the fact remains that this is the second date when the State counsel has sought still further time to file an affidavit in response to the petition.

That being so and keeping the aforesaid circumstances in view, (at this stage only as regards the the petitioner having been declared to be a proclaimed offender), he is ordered to be admitted to interim bail to the satisfaction of the trial court/CJM/Duty Magistrate concerned, till the next date of hearing before this court.

Adjourned to 25.08.2020.

It is expected that, well before that date, the reply to the petition will be filed on behalf of the State.

A copy of this order be placed on the file of the other connected matter too."

CRM-M-19191 of 2020

A reply to CRM-M-19191 of 2020 (by which the petitioners seeks quashing of the order dated 05.12.2017 declaring him to be a proclaimed person), has been filed by the Deputy Superintendent of Police, Samana, giving therein the background of the case and eventually stating that the petitioner, being an accused, is required by the police, and having declared to be a proclaimed person and further, with him never having faced trial, he is not entitled to any relief from this court.

It has also been stated in the affidavit that the notices under Sections 82/83 of the Cr.P.C. were pasted on the wall of the petitioners' residence in his village, as also in a common place of the village, on 23.10.2017.

Mr. Ahluwalia however reiterates what he had submitted on the last date of hearing, that the petitioner in fact left India on 18.03.2017 and returned to India only on March 04, 2020, with the FIR itself having been registered on March 24,

2017.

He therefore submits that with the petitioner never having evaded his arrest, he having left the country for the UAE prior to the registration of the FIR, the impugned order passed by the learned Sub Divisional Judicial Magistrate, Samana, declaring him to be a proclaimed person, is wholly erroneous and therefore deserves to be quashed.

PER CONTRA, Mr. R.S. Thind, learned DAG, Punjab, reiterates the contents of the affidavit to submit that the petitioner being the prime accused in the FIR, does not deserve any relief from this court.

However, upon query, he does not deny that as per his instructions also, the petitioner had left India prior to the registration of the FIR and has returned only on March 04, 2020 as per his passport, with him never having come to the country in between.

Having considered the matter, in view of the above fact, that the petitioner was actually never served of the notice issued to him under Section 82/83 of the Cr.P.C. at any stage with him having been abroad, though it otherwise may be difficult for this court to believe that he was not informed of those notices by his relatives, yet, keeping the entire circumstances in view and factually it being so that he was never in India even at the time of registration of the FIR, this petition is allowed, with the impugned order declaring the petitioner to be a proclaimed person, set aside.

CRM-M-19836 of 2020

Mr. Ahluwalia has also drawn attention of this court to the judgment passed by the learned Addl. Sessions Judge, Patiala, acquitting all co-accused of the petitioner for the commission of all offences as they were charged with, with comments also made by that court as regards the role of the petitioner (though he was not on trial at that stage).

He points specifically to paragraphs 32 to 34 of the said judgment, wherein as regards the offence punishable under Section 376 of the IPC, it has been held that if there was any sexual intercourse between the petitioner and the prosecutrix, it was consensual and that even the spermatazoa detected on the vaginal swabs taken from the prosecutrix, could not be related to the petitioner because even as per the prosecution witnesses themselves, the petitioner last had contact with the prosecutrix about 20 days prior to her medical examination, and consequently, the indication would be that with the life span of spermatazoa being only 72 hours, the said spermatazoa could not be presumed to be of the petitioner.

As regards the offences punishable under the provisions of Information Technology Act, 2005, it has been held by that court that in fact it was the prosecutrix who had taken "selfies", i.e. self photographs, and had sent them to the petitioner and further, neither the sister of the prosecutrix was examined nor

was the mobile phone of the sister taken into custody to determine as to from whose mobile phone those photographs were sent (to the sister of the prosecutrix).

That being so, with the petitioner already having been admitted to interim bail by the learned Illaqa Magistrate, Samana, on the directions issued by this court on the last date of hearing, in the aforesaid circumstances, I would see no reason not to admit the petitioner to bail and consequently, the order of this court dated 10.08.2020, admitting him to such bail, is made absolute on the same terms and conditions, subject further to the petitioner joining investigation as and when summoned by the investigating agency, but with him, in the aforesaid circumstances, not to be arrested.

The petition is accordingly allowed.

Naturally, if the investigating agency has any reason to seek custodial interrogation of the petitioner, an appropriate application would be moved by it for that purpose.

However, it is made absolutely clear that all observations made hereinabove or in the previous order, of this court, are only in the context of these two petitions, seeking anticipatory bail to the petitioner, and seeking quashing of the order declaring him to be a proclaimed person.

Further investigation into the matter would continue as per the evidence gathered upon the petitioner joining investigation as and when summoned by the investigating agency; and as per evidence led before the trial court if the matter eventually goes to trial.

A photocopy of this order be placed on the file of the other connected case.