
(1983) 03 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 719-M of 1983

Neeta alias Anita Rani

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 03-03-1983

Acts Referred:

Citation : (1983) 1 RCR(Criminal) 218

Hon'ble Judges : S.C.Mital, J

Advocate : Ramesh Puri, Harbans Singh, Advocates for appearing Parties

Judgement

S.C. Mital, J. (Oral)

1. The salient facts of this case are that having taken cognizance of the complaint under section 302 and 506 read with section 34 of the Indian Penal Code, the Magistrate, in the exercise of his powers under section 204 of the Code of Criminal Procedure issued nonbailable warrant for the appearance of Miss Neeta alias" Anita Rani. In order to avoid arrest she filed the present petition under section 438 of the Code of Criminal Procedure for anticipatory bail. Such interim bail was granted to her. She then appeared in the Court of the Magistrate, where she executed the requisite bond.

2. Learned counsel for the State has challenged the maintainability of this petition under section 438 of the Criminal Procedure Code on the ground that in the scheme of things an order passed by a Magistrate under section 204 of the Criminal Procedure Code, cannot be interfered with the aid of section 438. Support is sought from my view expressed in Rana Gajinder Chand v. Shri Manohar Singh and another (1978) V.Cr. L.T. 219 and also by the judgment of S. S. Sandhawalia, J. (Now the Hon'ble Chief. Justice) in Baba Gurbanchan Singh Nirankari v. State of Punjab, (1978) V. Cr.L.T. 143. Accordingly, I accept the preliminary objection.

3. In the alternative learned counsel for the petitioner referred to my view expressed in Shri Manohar Singh's case (supra) that the impugned order of the

Magistrate under section 204 Criminal Procedure Code, was open to revision by this Court. Accordingly, I have considered the broad facts of this case. The petitioner is said to be a young girl of 18 years and not the principal accused in the cases. Besides, the discretion under section 204 of the Code of Criminal Procedure should be so used as not to subject the accused persons to the indignity of arrest, unless there is need for it. In the present case the fact of the matter is that, upon the material placed before me, for taking the drastic step of seeking attendance of petitioner by issuing nonbailable warrant is not justified. Reference was also made to the proviso to section 437(1) of Code of Criminal Procedure to the effect that even in a case punishable with death or imprisonment for life, a woman may be released on bail. Upon an overall view of the matter, I find that the impugned order of the Magistrate cannot be sustained.

4. Learned counsel for the State then urged that admittedly the Magistrate has committed the case to the Court of Session, as such, he is no longer seized of the case. At the same time it has been highlighted that in consequence of the interim relief granted by this Court the Magistrate did not commit her in custody. It is accordingly directed that the petitioner shall remain on bail until the conclusion of her trial. The petition stands disposed of accordingly.