

(2023) 01 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 44422 Of 2022 (O&M)

Simarjit Singh Bains

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 161, 437A, 438(2), 439, 446, 482

Indian Penal Code, 1860 — Section 120B, 376

Citation : (2023) 01 P&H CK 0104

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : APS Deol, Himmat Singh Deol,, Prashant Manchanda, Ferry Sofat, H.S. Sitta, Vikas Arora, Anupam Gupta, Gautam Pathania, Bhavnik Mehta, Sukhpal Singh, Sekharan Singh, Chandan Dhandha

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

180

10.7.2021

Division no.6, Commissionerate of Police, Ludhiana, District Ludhiana.

376, 354, 354A, 506, 120-B IPC & 376-2(N), 201 IPC

1. The petitioner incarcerated in the FIR captioned above, on the allegations of

committing rape upon the prosecutrix, has come up before this Court under Section 439 CrPC seeking bail.

2. As per paragraph 25 of the bail petition, the petitioner was taken in custody on 11.7.2022. The petitioner has not mentioned his criminal antecedents in the present petition. However, as per paragraph 17 of the reply filed by the State by way of affidavit of Commissioner of Police, Industrial Area-B, Ludhiana, the petitioner-accused is involved in as many as 23 more cases, which are pending at different stages. Perusing the criminal antecedents of the petitioner, it appears that the petitioner is a political activist and agitationist and large number of cases points towards the same.

3. It would be expedient to give a brief reference to some of the connected cases listed along with this petition, as under: -

A. CRM-M-39489-2020 xxxx (name Withheld) Vs. State of Punjab & others:

Vide this petition, the prosecutrix came up before this Court under Section 482 CrPC seeking protection of her life and liberty, apprehending danger at the hands of accused Simarjit Singh Bains, respondent no.5; registration of FIR under Section 376 IPC, 120-B IPC, and other directions.

In paragraph 2 of the reply filed in this petition, Assistant Commissioner of Police Ludhiana stated that the prosecutrix had filed a complaint dated 16.11.2020, in which she had alleged that the petitioner- Simarjit Singh Bains, had raped her. Apart from that, the petitioner filed various other complaints on the same subject. Commissioner of Police Ludhiana constituted a Special Investigating Team (SIT) on 10.2.2022 to inquire into the complaints. The SIT recorded statements of the prosecutrix and collected her call details and Whatsapp messages.

In the meantime, the prosecutrix also filed a complaint under Section 156(3) CrPC before the Court at Ludhiana, and vide order dated 7.7.2021, the concerned ACJM, Ludhiana, directed registration of FIR, and consequently, the present FIR was registered against Simarjit Singh Bains and his six accomplices namely Karamjit Singh, Baljinder Kaur, Jasvir Kaur, Sukhchain Singh, Paramjit Singh, and Goggi Sharma. The mobile phone of the petitioner was also taken into possession to retrieve the WhatsApp messages as evidence. It was also stated that to protect the life of the prosecutrix; four police personnel were deputed. On 8.4.2022, the said petition was dismissed as withdrawn because the prayers were met, i.e., FIR registered, and Security provided.

B. CRM-M-26627-2021 Simarjeet Singh Bains Vs. State of Punjab & another:

Challenging the order dated 7.6.2021 passed Additional Sessions Judge, Ludhiana, whereby the complainant's application filed under Section 156(3) CrPC was treated as a complaint case, was set aside, and the trial Court was ordered to decide the same afresh, the accused-petitioner had come up before this Court under Section 482 CrPC.

Vide order dated 23.7.2021, a coordinate Bench of this Court had dismissed the said petition.

C. CRM-M-19489-2021 Simarjeet Singh Bains Vs. State of Punjab

Vide this petition, filed under Section 482 CrPC; the accused-petitioner sought a quashing of the order declaring him proclaimed offender in the FIR, as mentioned above. However, vide order dated 10.6.2022, the said petition was disposed of and rendered infructuous.

D. The other accused had also filed similar petitions and vide order dated 10.6.2022, a coordinate Bench of this Court did not grant any relief.

4. I have gone through the said files, and there is no need to refer to the bulky record, and this Court has referred to the record relating to the present bail application of the accused petitioner only. However, the court has gone through the facts leading to the registration of FIR captioned above and all other relevant documents.

5. Petitioner's counsel argued that in the complaint, which led to the registration of the FIR captioned above vis-à-vis the complaint dated 5.10.2020, which the victim gave to the then Chief Minister, Punjab, there are vital improvements and omissions. Initially, the petitioner was not involved, and on 10.10.2020, the matter was settled between the parties after recording their statements. After that, the concerned Assistant Commissioner of Police also noted in the files that the complainant's satisfaction stands recorded, and no action was required to be taken. Learned counsel also referred to Annexure P-4 to P-6 in this regard. Petitioner's counsel submitted that the present FIR had been registered to ruin the petitioner's career at the instance of his political opponents, and the complainant is playing in their hands. He further argued that if a lady is raped for the first time, she will refrain from visiting such a person again unless she was blackmailed by revealing such an act or by showing her video or photographs, which is not the present case. The victim's conduct for visiting the petitioner again and again prima facie points out her consent for whatever has happened. However, the petitioner's counsel reserved his rights to continue her to abandon this stand of consent in the trial. He further submitted that Paramjit Kaur drafted the complaint at the instance of Karamjit Singh Karwal.

6. While opposing the bail, the State contends that given the criminal past, the accused is likely to indulge in crimes, after he is released on bail. State counsel has referred to the statement of the victim, wherein she had mentioned that the petitioner-Simarjit Singh Bains gave a phone call and sent a message to her calling her to his office, where he asked her to sit in the adjacent room. However, she wanted to sit in public office. The petitioner asked why she did not sit in the adjacent room. On that, she said that she was tired, to which he told her that he would remove her tiredness. State counsel further argued that there is no inconsistency in the victim's allegations, and there is corroboration through call details records. He further stated that CDR locations and call details corroborate

the victim's statement. He referred to page 54 of the status report, pointed toward transcripts, and argued that the petitioner's accomplices were intimidating the victim. Thus, the petitioner is not entitled to bail because of his conduct.

7. As per the reply filed by the complainant, on 16.12.2020, the complainant gave a written complaint to the then Chief Minister, Punjab, alleging therein that her husband had died due to illness at the beginning of 2019 and her elder son had started doing the work of his father. She had purchased a house for a sum of Rs.11 lakhs through a property dealer. The said property dealer had arranged a loan of Rs.10 lakhs for her from a bank using his sources. Out of the loan of Rs.10 lakhs, the property dealer kept Rs.1.25 lakh towards his commission and other miscellaneous expenses for availing loan. Due to the death of her husband, the complainant defaulted in repayment of her installments, and the recovery agent of the bank came to her workplace and threatened that they would take possession of the house and also issued a notice of recovery and possession. On this, the complainant contacted the property dealer, who assured her that he would provide some concession in installments to her, but he advised her to give the property with him, and he would make repayment of the remaining installments. He further promised that he would provide her with a plot of 60 square yards and hand over cash of Rs.4.5 lakhs. The cost of that plot is Rs.3,000/- per square yard. On this, when the victim told the property dealer that the plot was of no use to her, the property dealer replied that he did not have any money to pay her back, and he would ensure that she was able to sell her plot @ Rs.2500/3000/- per square yard. Faced with this situation, the victim went to the petitioner and apprised him of her plight, who told her that the property dealer and the bank were land mafias. After this, she kept asking the property dealer to sell the plot, but he evaded her. Due to the Covid-19 lockdown, her financial position became very bad, and her son's business was also closed. In despair, she went to the petitioner and asked for help. After listening to her, the petitioner committed forcible rape upon her, did not take care of her pleadings to spare her, and somewhat intimidated her. The petitioner asked the property dealer to return the money from the victim's plot to her and directed him to pay Rs.25,000/- as the first installment. After that, taking advantage of her plight, the petitioner started calling her to him again and again and continuously committed rape upon her, sometimes in his office and on some occasions, in the house of Jasbir Kaur (co-accused) near his office. In between, she talked to one Baljinder Kaur, who belonged to the petitioner's party. But she advised her to keep quiet. In despair, she made a complaint to the then Chief Minister, which was forwarded to the police and the police got her money back @ Rs.2500/- per square yard. After this, she stopped going to the petitioner on his calling. After that, the petitioner's brother Karamjit Singh started sending offensive messages to her through voice calls and asked her to come to him. Being disturbed due to this, on 16.11.2020, the victim met the Commissioner of Police, Ludhiana, and apprised him of her plight and gave a written complaint to

him. Through his brother and Personal Assistant, the petitioner started threatening her, but she did not get afraid and informed the Commissioner of Police everything. She further informed the Commissioner of Police that one minister from Ludhiana was siding with the petitioner, and due to him, even the police were siding with him, and they did not do any justice to her under the influence of these influential people.

8. Learned senior counsel representing the complainant argued that the victim had given a handwritten complaint; consequently, the complaint case filed under Section 156(3) was its replica. He further submitted that the petitioner dared to rape her in front of Jasvir Singh. He further referred to Annexure P-7 to submit that the petitioner committed rape upon the prosecutrix, and she had fallen into his trap. The complainant's counsel also drew attention to orders passed by a coordinate Bench of this Court Annexure P-9 (page 158) in the petitions referred to above. In rebuttal to the pleas of consent, taken by the petitioner's counsel at that stage, the complainant's counsel stated that consent had to be seen in the light of the Covid-19 pandemic, which had aggravated financial constraints of the victim and put her into severe mental stress. He further submitted that every time the victim went to the petitioner, he ravished her taking advantage of her distress and, thus, how a woman in distress could be a consenting party to sexual intercourse. As such, the plea for consent is an afterthought to mock her plight. He further submitted that the petitioner and his accomplices have threatened the victim to withdraw the complaint and are continuously filing frivolous cases against her in Punjab, Haryana, Delhi, and Orissa, far distant places. He further submitted that keeping in view the patronage that the petitioner enjoyed and in case of grant of bail to the petitioner, he would make the victim's life hell.

9. The complainant's other objection to the present petition is that the petitioner got the following complaints filed against the victim and her family members, and due to threats, the State provided 24 hours security to the victim, which is continuing. Thus, in case the petitioner is released on bail, he would not pose a significant risk to the life of the victim and her family members: -

- 1). Complaint No.2281 dated 22.12.2020 against prosecutrix and her son at Ambedkar Nagar, New Delhi;
- 2). Complaint No.16 dated 19.02.2021 against son of the prosecutrix at Panchkula, Haryana;
- 3). FIR no.228 dated 16.07.2021 against the son of the prosecutrix at Kota, Rajasthan;
- 4). FIR No.154 dated 06.08.2021 against witness Ranjit Singh Khera at Ambala, Haryana;
- 5). FIR No.312 dated 21.12.2021 against the prosecutrix, her son, father and witness Ranjit Singh Khera at District Jagatsinghpur, Odisha.'

10. Counsel for the petitioner and the complainant have cited a plethora of judgments, mainly dealing with appeals on conviction and reiterating misconceptions of facts and law, which is well settled. Citing and referring to them is not required.

11. The gist of the prosecutrix's allegations is that the petitioner taking advantage of her precarious financial conditions, which had worsened due to the Covid-19 pandemic, and further became unmanageable due to default in payment of bank installments, made her sleep with him on numerous occasions. The prosecutrix's stand, as pointed out by her counsel, is that even if this court presumes that she had given her consent to coitus, such consent was nothing but passive consent, for which she had no other option given her financial turmoil and loss of her husband, which further aggravated by the loss of earnings in the family due to Covid-19 pandemic. The subsequent opposition to the bail is that considering the position on which the petitioner was put by the people being their representative, it would have been highly immoral and inappropriate to set such an example in his personal life. He was supposed to set the highest morals and good ethics, but his conduct was contrary to social expectations.

12. On the request of the Court, State counsel supplied a copy of the statement of Kamalpreet Singh, who worked in the Electricity Department at Ludhiana, recorded under Section 161 CrPC. He was staying two houses away from the house of the petitioner accused. He stated that there always remains a rush of visitors to the petitioner's house, and some people would come and stay in his house. Before the lockdown, one lady came to his (Kamalpreet's) house. He had seen her taking tea with his mother in his house. Later, his mother said that that lady's name was Gurdeep Kaur, who had come to meet the petitioner Simarjit Singh Bains regarding her house. Due to the rush of people in the house of Simarjit Singh Bains, she had come to their house, and neither Simarjit Singh Bains came to his house nor met with them.

13. A perusal of the bulky and thick file reveals that the first episode was alleged on August 04, 2020, when the petitioner called the victim to his office and raped her in the cabin. The victim's stand was that she was helpless, and she could not resist because the accused had promised her financial help, as she could not pay her monthly rent. After that, from September to December 2020, the petitioner called the victim in his office and other places and had coitus with her 10-12 times. On October 01, 2020, the victim alleged that she was called into the house of Jasvir Kaur, where the petitioner again committed coitus with her in the presence of her (Jasvir Kaur's) son, namely Kamalpreet Singh. In his statement recorded under Section 161 CrPC, Kamalpreet Singh took a contradictory stand and stated that at that time, when the victim had come to sit in their house because of the scarcity of space in the office of the petitioner-Simarjit Singh Bains, the petitioner-accused did not visit their house. He further clarified that in his presence, the petitioner did not meet the victim in their house.

14. There is no evidence that she reflected any trauma through her body

language or conduct or complained to anyone about the forcible assault. There is no allegation that she did not do so because she was under a shock. There is no evidence that the consent was obtained by misconception of facts. Thus, a reading of the allegations, more particularly the fact that Kamalpreet Singh contradicted the victim's statement and that despite numerous opportunities, she remained quiet for a long time, would dent her credibility, and such a dent would not justify any further pre-trial incarceration.

15. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal*, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

16. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

17. In *Mahidul Sheikh v. State of Haryana*, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

18. Given above, provided the petitioner is not required in any other case, he shall be released on bail in the FIR captioned above, in the following terms:

- (a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND
- (b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, any nearest IILaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

- (b) Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district. Said fixed deposit may be

made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). Such court shall have a lien over the deposit until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/ returned to the depositor.

(d). It shall be the total discretion of the petitioner to choose between surety bond and fixed deposit. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(e). On the reverse page of personal bond, the petitioner shall mention his permanent address along with the phone number, preferably that number which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned police station and the concerned court.

(f). The petitioner to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

19. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

20. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

21. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

22. During the trial's pendency, if the petitioner repeats or commits any offence

where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

23. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In *Mohammed Zubair v. State of NCT of Delhi*, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

24. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signature on personal bonds shall explain all conditions of this bail order in any language that the petitioner understand.

25. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

26. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

27. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.