

2023:PHHC:137149

CRM-M-52509-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52509-2023 (O&M)

Date of decision: October 20, 2023

Ashish Kapoor

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate for petitioner.Mr. Ferry Sofat, Additional AG Punjab with
Mr. Hakam Singh, AAG Punjab.

Mr. Nikhil Vashisht, Advocate for complainant.

ARUN MONGA, J. (ORAL)**CRM-44060-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.208 dated July 17, 2023, registered under Sections 327, 323, 294, 506, 120-B, 384 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') (Section 201 IPC added later on), at the Zirakpur, Police Station in SAS Nagar (Mohali).

2. According to the prosecution's account, the complainant, Poonam Rajan, filed a complaint on June 15, 2023, with the SHO of P.S. Zirakpur, seeking the registration of a case against Ashish Kapoor (the petitioner), his wife Kamal Kapoor, Harjinder Singh ASI, DSP Pawan Kumar, DSP Tarlochan, DSP Samarpal, DSP Pawan Kumar (who was the SHO of PS Zirakpur at the time), Arun Rajan, Hem Raj, and others. Allegations levelled include a conspiracy among them with the motive to illegally torture the complainant and her family members.

2.1. The complainant claimed that she was tortured and beaten while under police remand in FIR No.151 from May 09, 2018, to May 22, 2018. A video clip showed Ashish Kapoor

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(the petitioner) physically assaulting the complainant in the police station. Harjinder Singh ASI served as the Investigating Officer (I.O.) in that case and was a close aide of the petitioner. The petitioner and Samarpal were alleged to have voluntarily beaten the complainant and her brother, Kuldeep, to force confessions regarding property matters, along with threats to falsely incriminate them with heavy charges. The video clip was supported by statements from DSP Pawan Kumar, DSP Tarlochan, and DSP Samarpal, who were accused of misusing their official powers at the time. It was further alleged that they confessed to their presence at the scene during the alleged torture.

2.2. Kamal Kapoor was accused of recording videos of the complainant's torture at the hands of the petitioner and making video calls to Arun Rajan, the complainant's husband, who also allegedly instigated the accused not to pursue divorce proceedings. Hem Raj also visited P.S. Zirakpur during those days and indicated he would provide a statement in favor of Lovlish Garg, who was a close aide of the petitioner. Consequently, an FIR was registered. The petitioner was arrested during the investigation and has been in custody since July 19, 2023.

3. First and foremost, learned Senior Counsel for the petitioner argues that the co-accused, Hem Raj, has already been granted interim anticipatory bail by an order dated August 1, 2023 (Annexure P-14) from the lower court. Additionally, the co-accused, Lovish Garg, had been granted interim anticipatory bail by an order dated August 1, 2023 (Annexure P-15) by this Court. On the ground of parity alone, the petitioner is thus entitled to bail, yet he is languishing in jail.

3.1. Furthermore, the learned Senior Counsel for the petitioner argues that, based on same set of concocted allegations/incidents, the petitioner had previously been accused by the same complainant in FIR No.3, dated May 1, 2019, under Sections 354 and 376-D of IPC, as well as Sections 7 and 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station, SAS Nagar. After an investigation, the police presented a cancellation report dated February 24, 2022 (Annexure P-2), finding the allegations against the petitioner to be false.

3.2. The complainant's statement was recorded under Section 164 Cr.P.C., and subsequently, charges under Section 376-D, 354 of IPC, and Sections 7 and 13(2) of the PC Act were added to FIR No.3, dated May 1, 2019, with the petitioner being named as an accused. An SIT, headed by the ADGP, concluded that no evidence was found regarding the

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physical torture of the complainant in police custody by Ashish Kapoor, Samarpal, Pawan Kumar, and Harjinder Singh. Only after the SIT found the allegations to be false, the aforementioned cancellation report dated February 24, 2022 was submitted. The same allegations, which had already been investigated by the SIT led by a senior police officer of the rank of ADGP in FIR No.3, are now being brought up in the present FIR against the petitioner.

3.3. He further submits that the present FIR is a retaliatory response to FIR No.151 dated February 5, 2018, in which the complainant herself was/is an accused. This FIR had been registered by co-accused Lovish Garg against the complainant. Vide a judgment and order dated August 6, 2019 (Annexure P-3), the complainant, along with other accused, were convicted in FIR No.151 by a learned JMIC in Derabassi.

3.4. Learned Senior argues that the offenses involved in the present FIR are triable by a Magistrate's Court. This present FIR is the fourth one and is being registered based on the same cause of action, allegedly due to the influence of senior police officers in Punjab, colluding with the complainant to falsely implicate the petitioner, driven by departmental rivalry with oblique motives.

3.5. The learned Senior Counsel also argues that the complainant had registered another FIR, No.17, dated October 16, 2022 (Annexure P-4), against the petitioner and others. The petitioner and co-accused Harjinder Singh approached this Court through CRM-M-2151-2023 and CRM-M-1584-2023. This Court has granted bail to the petitioner and his co-accused in an order dated May 30, 2023 (Annexure P-7).

3.6. The learned Senior Counsel argues that on November 3, 2022, the State Police Complaints Authority (SPCA) of Punjab ordered a reinvestigation into FIR No.3 without issuing notices to the affected parties. Subsequently, another FIR, No.4, was registered on December 30, 2022, to investigate allegations of rape and torture against the petitioner. The petitioner challenged the SPCA's order in CWP-3235-2023. In an order dated February 17, 2023 (Annexure P-10), this Court stayed the operation of recommendations contained in paragraph 32(iv) of the SPCA's order, which had ordered a reinvestigation into FIR No.3.

3.7. The petitioner also filed a COCP-1506-2023. In an order dated May 18, 2023 (Annexure P-11), this Court issued a contempt notice to police officers, directing them to file compliance affidavits and strictly adhere to the order dated February 17, 2023, and not

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proceed further in FIR No.4. Despite specific orders from this Court, the present FIR No.208 was registered on July 17, 2023, to allegedly falsely implicate the petitioner.

3.8. The learned Senior Counsel also argues that on May 30, 2023, when the petitioner was granted bail in FIR No.17, the vigilance bureau immediately registered another FIR, No.21, on the same day, with allegations of possessing disproportionate assets. The petitioner approached this Court through CRM-M-46067-2023. In an order dated September 26, 2023, a coordinated Bench of this Court granted interim bail to the petitioner.

3.9. The learned Senior Counsel further argues that the petitioner and his wife, Kamal Kapoor, have also filed an COCP-2086-2023. In an order dated July 21, 2023 (Annexure P-13), this Court directed that no coercive steps be taken against the petitioner's wife in the present FIR.

4. Per contra, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings and tempering with evidence, if granted bail. Also argues that the petitioner has committed a serious offense.

5. I have heard the rival arguments and reviewed the case file.

6. Matter was heard at length yesterday i.e., on 19.10.2023, when the following order was passed by this Court:-

“Matter has been heard at length. It transpires that based on same set of allegations, inter alia, involving the incident in question, of which a video was made by one of the police official wherein petitioner is seen slapping the complainant, an earlier FIR No.03 dated 01.05.2019 was registered invoking Sections 377, 388, 389, 101, 115, 116 and 120-B IPC, Section 7, 13(b)(II) of the PC Act, 376(2)(a)(b)(d), 376(c)(c), 354, 419, 506 IPC at Police Station, SAS Nagar. After carrying out the investigation in the same, a cancellation report was filed.

On Court query, as to whether the petitioner was named as an accused in the aforesaid FIR and the reasons transpiring at this belated stage for registration of the FIR in question i.e. FIR No.208 dated 17.07.2023 under Sections 327, 323, 294, 506, 120-B and 384 IPC (Section 201 IPC was added later on) at Police Station Zirakpur, District SAS Nagar, Mohali, after a lapse of five years based on the same very incident recorded on a cell phone by a police official, learned state counsel seeks time to get instructions.

Pertinently, petitioner has already been granted bail in the connected FIR, and yet, he is being kept in custody on the allegations that the slapping incident resulted in an injury qua which Sections 323, 327 of the IPC has been invoked. That too, without there being any supporting medical report qua the injury suffered by the victim.

Learned State counsel seeks time to verify this aspect also i.e. if any medico legal report has been relied upon in the challan, which is stated to have been filed before the learned trial court. At his request post it tomorrow i.e. on 20.10.2023, to enable him to get instructions.”

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6.1. *Apropos* on resumed hearing today, after hearing the arguments again, no satisfactory response has come forthwith from learned State counsel *qua* the aforesaid observations of the Court.

7. My attention has been drawn to cancellation report dated February 24, 2022 (Annexure P-2) presented in FIR No.3 dated May 01, 2019, in particular findings contained at para-B, which reads as below:-

“(B) Findings regarding the allegations with context to Police. Station Zirakpur.

Allegation-1: *Mrs. Poonam Rajan alleges that she and her family members were falsely implicated in the case FIR No. 151 dated 05-05-2018 w/s 406,420, 120-3 IPC, Section 24 Emigration Act Police Station Zirakpur due to the influence of Mr. Ashish Kapoor. She further alleged that she and her brother were physically tortured at Police Station Zirakpur by Inspector Samar Pal on 12.05.2018 where they were in police custody and an audio video recording was made by Insp. Samarpal.*

Finding *During the investigation of this allegation, it has been found that case FIR No.151 dated 05-05-2018 u/s 406; 420, 120-B IPC, Section 24 Emigration Act Police Station Zirakpur District SAS Nagar was registered against Poonam Rajan, Prem Lata and Kuldeep Singh by the then SHO, Police Station Zirakpur on the complaint of Lovelish Garg. The said case was registered after a detailed enquiry. Copy of the FIR is Annexure-P.*

After the completion of the investigation of this case, the charge sheet of the case u/s 173 of the Cr.PC was presented in the Hon'ble Court. and the Hon'ble Court of Judicial Magistrate First Class, Dera Bassi, Mr. Gaurav Dutta who after hearing the case held the accused guilty and were sentenced vide order dated 06-08-2019. The copy of the order is attached as Annexure-Q.

Allegations: *It has been alleged by the complainant Ms Poonam Rajan that during her police custody in FIR No: 151/18 P.S. Zirakpur she was raped by Sh. Ashish Kapoor.*

Regarding the alleged allegations rape leveled by Poonam Rajan against Sh. Ashish Kapoor; PPS. During investigation it is found that Smt. Poonam Rajan had filed CRM-M 34184 of 2018 in the Hon'ble Punjab and Haryana High Court on 17-08-2018 in connection with this case, a copy of the same is attached herewith. This writ was disposed of by the Hon'ble Court on 07-01- 2019. A copy of the order is appended herewith. In this writ, Mrs. Poonam Rajan did not level any allegation of rape nor did she mention of rape during her examination u/s 313 Cr.PC. It is pertinent to mention here that the alleged allegations of rape are leveled after the delay of one year which in itself is shrouded in suspicion. It is worthwhile to mention here that In case FIR No: 03 dated 01-05-2019 us 377,388,389,109,115,116,120- B IPC, PS SSOC., SAS Nagar, Mrs. Poonam Rajan had got recorded statement of her relatives pertaining to FIR No. 151/2018 Police Station Zirakpur in December 2019 and January 2020, although her mother PremLata and brother Kuldeep Singh were convicted by Hon'ble Court at Dera Bassi on 06-08-19. Mrs. Poonam Rajin during the pendency of case FIR No. 151 dated 05-05-18 u/s 406,420, 120-B, 467, 468, 471 IPC, Section 24 Emigration Act, Police Station Zirakpur did not call her relatives in defence evidence in the trial court which is highly unusual. It may be mentioned here that the allegations of rape by Poonam Rajan were levelled after nearly 1 year this inordinate delay on part remains unexplained. The allegation levelled by Poonam Rajan was not substantiated during the investigation. During investigation no evidence was found about physical torture of Poonam Rajan and her brother in police custody by Sh. Ashish Kapoor, Inspr. Samar Pal (Now DSP), SHO Pawan Kumar, 10 Harjinder, Singh as alleged. Moreover there is no technical evidence on record as time in which such evidence can be gathered has

already lapsed due to delay in reporting the offence. Hence in the absence of any evidence regarding the physical torture and custodial rape which remains corroborated by any medical evidence and due to reason of delay and further it remains unexplained (by the complainant) as to why such violence was not reported to the Hon'ble Court in which she was produced for police/judicial remand or before the duty doctors to whom she was taken for medical examination by the police during her police remand. It can be concluded that this allegations seem to be leveled with ulterior motive.

Allegation-2: Mrs Poonam Rajan alleges that on 12th may night, Ashish Kapoor along with Insp. Samarpal, SEO Pawan Kumar, 10 Harjinder Singh along with the team took them to her maternal aunts house in Village Bhadson in Karnal Distt, before reaching to her aunt's house Ashish Kapoor raped her in front of her brother and threatened her on 12.05.2018 when they were in police custody and Inspr. Samarpal accompanied the raiding party of Police Station Zirakpur, when recovery was made from her relatives.

Finding:- There is no evidence on record about Insp. Samarpal (now DSP) accompanying with raiding party of Police Station Zirakpur with connection to FIR No.151 dated 05.05.2018. During enquiry it has been revealed that case FIR No.151 dated 05-05-18 u/s 406, 420, 120-B, 467, 468, 471 IPC, Section 24 Emigration Act, Police Station Zirakpur was registered by District Police and its investigation was conducted by Local Police. During investigation of this case the recovery was made as per procedure and recovered articles were taken in custody by preparing memos of recovery. It is to pertinent to mention here that Inspr. Samarpal (Now DSP) was posted in Cyber Crime Cell at the time of registration and investigation of this case.

Regarding the allegations of rape leveled by Poonam Rajan against Sh. Ashish Kapoor (presently posted as AIG Vigilance) during the raid, it is found during investigation that Poonam Rajan had filed CRM-M-34184 of 2018 in the Hon'ble Punjab and Haryana High Court on 17-08-2018 in connection with this case, a copy of the same is attached as Annexure-R. This said petition was disposed of by the Hon'ble Court on 07-01-2019: A copy of the order is attached herewith. In this writ petition Mrs. Poonam Rajan did not mention any allegation of rape nor did she mentioned about these allegations in her statement recorded u/s 313 Cr.P.C.

Allegation: 3 Smt. Poonam Rajan alleges that whilst having conducted raids at her residence alleged articles and money withdrawal from the bank were taken away by the alleged police.

Finding: During investigation, it has been revealed that FIR No. 151 dated 05-05-18 u/s 406, 420, 120-B, 467, 468, 471 IPC, Section 24 Emigration Act, Police Station Zirakpur was registered District Police by and its investigation was conducted by Local Police During investigation of this case the recovery was made as per procedure and recovered articles weretaken in custody by preparing memos of recovery. It is pertinent to mention here that Inspr. Samar Pal (Now DSP) was posted in Cyber Crime Cell at the time of registration of this case. There is no. evidence on record about Insp. Samarpal. accompanying the raiding party in the said case Hence in the absence of any documentary evidence the alleged allegations of illegal recoveries could not be substantiated.

As per the record the following criminal cases in addition to the cases discussed above, are registered against Mrs. Poonam Rajan and her family members in the various Police Stations in the States of Punjab & Haryana

1. FIR No.102 dated 23-04-12 u/s 419, 420, 406, 506 IPC and Emigration Act, 1983 PS, ThanesarSadar, Kurukshetra (Haryana).
2. FIR No.746 dated 19-09-14 u/s 365, 376 IPC, Police Station Civil Line, Karnal (Haryana).
3. FIR No:440 dated 27-11-2014 u/s 420, 120-B IPC, Police Station Civil Line, City Amritsar.

The complainant Poonam Rajan has levelled allegations on the merits of the conviction in the case FIR No.151 dated 05-05-2018 u/s 406,420,120-B IPC, Section 24 Emigration Act Police Station Zirakpur this is beyond the

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scope of this investigation as she was convicted by the Hon'ble Court and her appeal is pending in the competent court.

Conclusion:

In view of the facts explained above the SIT has arrived at a considered conclusion through consensus that the allegations leveled by the complainant are afterthought in nature as the complainant has not produced any material evidence in support of her allegations. Moreover during investigation the allegations of the complainant have been investigated by the SIT at length. Therefore keeping in view the allegations of the complainant, statements of the Doctors, available record pertaining to the alleged allegations, physical verification of the alleged scene of sequence of events, statements of the witnesses and material evidence on record, the SIT has found that the allegations leveled by the complainant could not be substantiated during the course of investigation in view of lack of material evidence. Hence the same may be filed. The above mentioned report of SIT was submitted before DGP. He agreed with the report and vide letter No.591 Cr No.4 dated 06.01.2022 Director of Bureau of Investigation sent the investigation report to AIG/SSOC/SAS Nagar.

And it was directed supplementary challan under section 173(8) Cr.P.C. be submitted in Hon'ble Court. AIG/SSOC vide order dated 10.01.2022 directed the undersigned following orders.

The investigation of the case was kept pending in view of statement of Poonam Rajan recorded under section 161 and 164 Cr.P.C. The investigation was complete on SIT vide its report No. 705/R/ADGI, Security dated 23.12.2021. The report under section 173(8) Cr. P.C. is pending submitted for information of the Hon'ble Court."

7.1. Perusal of the above reflects that conduct of the complainant herself appears to be highly dubious. There appears to be an orchestrated attempt on the part complainant in collusion with certain officials, be it out of vengeance or otherwise, to keep filing one FIR or after other to somehow keep the petitioner in custody. Be that as it may, all these issues are matter of trial at this stage.

8. In response to a query from the Court, learned State counsel informs, under instructions from ASI Gurmail Singh, that the challan has already been filed. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

9. At this stage, the allegations against the petitioner are subject to outcome of trial. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since July 19, 2023, for more than 03 months.

10. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

11. Co-accused of the petitioner have already been granted interim bail, as aforesaid.

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12. The petitioner is a serving police officer in the State having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

13. Considering the overall scenario, without commenting on the merits of the case, the instant petition is allowed. I am of the view that a useful purpose would be served by keeping the petitioner in further preventive custody.

14. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

15. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 20, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No