
(2009) 05 P&H CK 0117

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Dheeraj Setia

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision: May 11, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 306

Citation: (2009) 05 P&H CK 0117

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Judgement

S.S. Saron, J.

Heard counsel for the parties.

2. The petitioner seeks pre-arrest bail in a case that has been registered against him for the offences under Sections 120B read with 306 and 506 Indian Penal Code (IPC - for short).

3. The facts leading to the case are that one Subhash was arrested by the officials of CIA Branch, Rohtak on 9.4.2008 in connection with a motorcycle theft case. Said Subhash was produced in Court on 10.4.2008. On 10.4.2008, the wife of said Subhash, who is a victim and the deceased in the present case was called to the CIA Staff by HC Balraj. When she went there, it was alleged that she was raped by HC Balraj and another Constable. The name of the other Constable later came to be known as Constable Silak Ram. The husband of the victim namely Subhash was granted bail in the motorcycle theft case on 24.4.2008. On his release, the victim disclosed about the rape committed on her. Thereafter, the victim made a complaint to the SP Rohtak on 26.4.2008, which complaint was marked to the petitioner who was posted as Deputy Superintendent of Police (City) Rohtak for inquiry on 29.4.2008. The petitioner conducted an inquiry and submitted his report (Annexure P2) on 31.5.2008, on the basis of which FIR 341 dated 31.5.2008 was registered at PS City Rohtak for the offences under Sections 376-B/34 IPC against the

accused - HC Balraj and Constable Silak Ram. The victim - wife of Subhash, thereafter submitted an application dated 7.6.2008 (P3) to the IG Rohtak Range, Rohtak for arresting the accused in FIR 341 dated 31.5.2008 for the offences under Sections 376-B/34 IPC. It is stated in the said application that the Police Officials - Balraj and Silak Ram had committed a bad act on her and threatened her that if she disclosed the incident to anybody then they would implicate her husband in a false case and would send him behind the bars. It is alleged that the said officials forcibly raped her by giving fist blows. The said facts were found true by the Inquiry Officer i.e. the petitioner and a case was registered on the basis of the investigations. However, neither her medical examination had been conducted nor the accused had been arrested till date. This was shameful for the Police department. Accordingly, it was requested that the accused be arrested at the earliest and her medical examination be got conducted. After two days i.e. on 9.6.2008, the victim committed suicide and she wrote a suicide note (P4). In the said note (P4), it has been mentioned that the Police officials had committed a bad act with her on 10.4.2008. Thereafter, it is also mentioned that although truth was found out in the inquiry conducted by the Inquiry Officer i.e. the petitioner who conducted the investigation and on the basis of which the present FIR was registered against them but till that time neither they had been arrested nor she had been subjected to medical examination. Now the Police was trying to help them. It is alleged that they had been continuously threatened and also lured for money, besides being threatened that in case the case was not withdrawn the result would be bad. She had not been given proper hearing and now she was committing suicide out of depression. It is also mentioned that HC Balraj and Constable Silak Ram would be responsible for the death since they both had ruined her life by committing rape on her.

4. After the death of the victim, on the directions of this Court vide order dated 18.7.2008 passed in CWP 10838 of 2008, the respondent- CBI registered the FIR on 24.7.2008 for the offences under Sections 120-B read with 306 and 506 IPC. The matter was investigated and insofar as the role of the petitioner is concerned, the case of the respondent-CBI is that the petitioner in connivance with the other co-accused i.e. Inspector Pawan Kumar the then SHO of PS City Rohtak had got the FIR 341 dated 31.5.2008 registered for the offences under Sections 376-B/34 IPC only. Section 376-B IPC in fact relates to inter-course by a public servant of a woman in his custody. The said section is not attracted as the victim was not in Police custody and she had never alleged in her complaint that she was in custody of the accused persons. The investigation that was carried out had established that the victim was never arrested by the CIA-I officials. ASI Prahlad Singh had stated that the accused-petitioner and Inspector Pawan Kumar the then SHO of PS City Rohtak and another co-accused had ordered him to register the FIR under Sections 376-B/34 IPC. The petitioner got the FIR registered under wrong Sections of law to give benefit to the police officials concerned.

5. Learned senior counsel appearing for the petitioner has contended that the petitioner was never arrested during the course of investigation and now challan has been filed.

Therefore, his custody is not required for the purposes of investigation. It is also submitted that in fact the petitioner is not liable for the offences as alleged and he is being falsely implicated. Rather the victim had appreciated the role of the petitioner in getting the FIR registered and thereafter getting the culprits booked in the case. The object of the trial, it is stated, is that the petitioner should appear in Court during the course of trial which he is ready to appear and in the circumstances, it is submitted that the petitioner is liable to be admitted to pre-arrest bail.

6. In response, learned Counsel for the respondent CBI has vehemently opposed the petition. It is submitted that the petitioner is the main accused in the case. He is the person who manipulated the entire case. The inquiry was marked to the petitioner in his capacity as DSP (City) Rohtak regarding commission of rape on 29.4.2008 and he delayed the inquiry till 31.5.2008. The inquiry even was finalized after the victim met the Additional DGP Haryana on 29.5.2008. The petitioner also did not get the victim medically examined which led the destruction of vital evidence. The FIR was deliberately registered for the offences under Sections 376- B/34 IPC so as to make out a bailable offence whereas the victim was never in Police custody. The wrong Sections were applied by underplaying the actual offence that was made out. It is also stated that the petitioner had recorded false statements of Smt Prem, Smt Parkasho and Naresh Kumar on 12.5.2008. Besides, the statements of Rajesh, Jaswant and Karamvir on 21.5.2008. The said persons, during investigation by the CBI stated that they were pressurized by HC Ramphal, HC Balraj and Cosntable Silak Ram to make false statements regarding the character of the victim. It is also submitted that the inquiry was conducted in a manner to show that the victim was promiscuous and was not of a good conduct. During investigation by the CBI, it is submitted that the statements of the said persons were also recorded u/s 164 CrPC by the learned JMIC Rohtak. Keeping in view the nature of allegations, it is submitted that the petitioner is not entitled to pre-arrest bail.

7. I have given my thoughtful consideration to the contentions of the learned Counsel for the parties.

8. It may be noticed that it is the admitted position that investigation in the case is complete and the charge report (challan) has been filed by the respondent-CBI in the Court of CBI Special Magistrate, Ambala. The petitioner has been summoned by the said Court and he is to appear on 12.5.2009.

9. The facts and circumstances as have been noticed above are that there are allegations against the petitioner who was working as DSP (City) Rohtak that he did not conduct a fair inquiry and delayed the inquiry. Besides, he got the FIR registered under wrong provisions of law so as to give benefit to the accused. The main thrust of the contentions of the learned Counsel for the respondent is that he delayed the inquiry from 29.4.2008 to 31.5.2008; the petitioner did not get the victim subjected to medical examination; he recorded the statements of persons in order to show the victim to be of easy virtue and promiscuous. It, however, does appear that the victim had complained of rape being

committed on her. The petitioner recommended the registration of a case under Sections 376-B/34 IPC. Section 376-B relates to a public servant taking advantage of his official position and inducing or seducing any woman, who is in his custody as such public servant or in the custody of a public servant, subordinate to him, to have sexual inter-course with him and such sexual inter-course does not amount to the offence of rape. The offence u/s 376-B IPC is punishable with imprisonment for 5 years and fine. Besides, it is cognizable (but no arrest is to be made without a warrant or without an order of a Magistrate) and is bailable. However, the question whether there is mensrea in the action of the petitioner in recommending the registration of the FIR for the offence u/s 376, IPC would have to be established and proved during trial and the matter cannot be tested by a pre-trial and neither can it be pre-judged on the basis of material as available on record. The petitioner is a DSP (City) and a Police Officer. Therefore, it cannot be conclusively said at this stage that he deliberately conducted the investigation in a manner to favour the other police officials. All these aspects would be required to be considered on the basis of evidence as is adduced. Besides, it is also true that the petitioner should apply and seek for regular bail by the concerned Court which is to consider the same on the basis of the charge report (challan) that has been filed and other material on record. The real intent of the prosecution at this stage would be that the petitioner should remain present during trial of the case as his custody admittedly is not required for the purposes of investigation.

10. In the circumstances, it would be just and expedient that the petitioner is granted interim bail till such time his application for regular bail is considered by the concerned Court.

11. Accordingly, this criminal misc petition is disposed of with the direction that the petitioner shall appear before the CBI Special Magistrate, Ambala tomorrow, which is the date fixed in the case. Besides, he shall move an application before the concerned Court for regular bail u/s 439 CrPC. In case an application for regular bail is filed, the petitioner shall be released on interim bail to the satisfaction of the said Court and his application for regular bail shall be considered thereafter as expeditiously as possible and preferably within 10 days.

12. It is made clear that any observation made hereinbefore, shall not be construed as an expression of opinion on the merits of the case and the learned Court dealing with the application for regular bail or the case, shall consider and dispose of the same on the basis of evidence and material as available on record.