

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-39157 of 2014 (O&M)

DATE OF DECISION: 19.10.2015

Kamal Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Sunil Polist, Advocate
for the petitioner.

Mrs. Ritu Punj, Addl. A.G., Punjab.

Ms. Anju Arora, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Crl. Misc. No. 9360 of 2015

This application has been filed for placing on record the whatsapp conversation and one audio CD as Annexures P-3 and P-4, respectively.

Application is allowed and Annexures P-3 and P-4 are taken on record.

Crl. Misc. No. M-39157 of 2014

The present petition has been filed under Section 438 Cr.P.C.
for grant of anticipatory bail to the petitioner in case FIR No. 152 dated

3.10.2014 registered under Sections 377/506/34 IPC at Police Station Lambi, District Sri Muktsar Sahib.

Learned counsel for the petitioner contends that as per allegations in the FIR, the petitioner caught hold of the complainant from her arms and her husband-Aman Sharma committed sexual intercourse and unnatural sex with her without her consent. Learned counsel further contends that the complainant has taken a loan of ₹ 16 lacs from the sister of the present petitioner and when the said amount was demanded, the petitioner has falsely been implicated in the case. A threat was also given to falsely implicate the petitioner. Learned counsel also submits that the conversation between the complainant and petitioner would show that the complainant was having cordial relations with the petitioner. Moreover as per allegations in the FIR, no offence under Section 377 IPC is made out against the petitioner as the main allegations are against the husband of the complainant. It is also the argument of learned counsel that neither the complainant nor her husband was present in the house on the date of occurrence. Nothing is to be recovered from the petitioner and he is ready to join investigation.

Learned counsel for the respondent-State submits that specific allegations are there against the petitioner and co-accused-Aman Sharma that he along with other co-accused threatened the complainant and co-accused Aman Sharma committed unnatural sex with the complainant without her consent and the present petitioner caught hold of the complainant. She further submits that the petitioner was granted interim bail by this Court on 18.12.2014 but he did not cooperate in the investigation and despite giving an opportunity, the recovery could not be effected.

Learned counsel for the complainant opposes the grant of

anticipatory bail to the petitioner on the ground that specific allegations are there against the petitioner and co-accused. Subsequently, a threat was also given to the complainant to put pressure upon her to withdraw the case against the petitioner.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Keeping in view the specific role, conduct of the petitioner and also the fact that the petitioner did not cooperate with the investigation as even the recovery of obscene movie and photographs prepared by accused persons could not be effected inspite of giving an opportunity by the investigating officer, the custodial interrogation of the petitioner is required. Moreover, the anticipatory bail application filed by co-accused, namely, Aman Sharma has already been dismissed by this Court.

For grant of anticipatory bail, not only the nature of offence, specific role of the accused is to be seen but the conduct of the accused during investigation is also to be looked into. The petitioner did not cooperate during investigation as the recovery of obscene movie and photographs prepared by the petitioner and his co-accused could not be effected.

Accordingly keeping in view the seriousness of the offence, specific role as well as non-cooperative conduct of the petitioner during investigation, no ground is made out to grant anticipatory bail to the petitioner. The petition being devoid of any merit is hereby dismissed.

October 19, 2015
pooja

(DAYA CHAUDHARY)
JUDGE