

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-5372 of 2016

Date of Decision: March 14, 2016

Darshan Lal son of Om ParkashPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Ritesh Pandey, Advocate for the petitioner.

Mr.DS Virk, Assistabt Advocate General, Punjab.

Mr.Munish Puri, Advocate for
Mr.Amit Kumar.

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TEJINDER SINGH DHINDSA, J.

Petitioner seeks concession of pre-arrest bail in case FIR No.4 dated 17.1.2016, under Sections 377, 384, 120-B of the Indian Penal Code and 66E, 67, 67A of Information Technology Act, 2000, registered at Police Station Narot Jaimal Singh, District Pathankot.

2. Learned counsel for the petitioner would submit that it is a case of false implication. It is contended that the complaint had been lodged in the first instance by the petitioner himself against Amit Kumar, Sunny Mahajan, Anil Kumar and Pardeep Sharma as regards the petitioner being forced into acts of unnatural sex and the same having been recorded in a laptop and

the petitioner being harassed and blackmailed to pay money on the threat that the recording of the unnatural acts would be circulated on social media. It is argued that even though the petitioner himself is a victim, but he has been nominated and projected as an accused by the police. Learned counsel contends that the petitioner has been serving at the particular Shrine (Dargah) for a period of almost 40 years and there has been no complaint from any devotee/visitor to the Shrine. It is further argued that it was one Ashwani Kumar @ Ashu who has also been nominated as an accused during the course of investigation and whose house is situated in front of the Shrine (Dargah) and who had inimical relations with the present petitioner over an issue of parking of vehicles near his house and in order to settle such grudge, Ashwani Kumar in connivance with Amit Kumar, Sunny Mahajan, Anil Kumar and Pardeep Sharma have hatched a conspiracy to tarnish the image of the petitioner and on 8.10.2015 entered the private residence of the petitioner and under threat and coercion forced him into unnatural acts and prepared proof/evidence so as to blackmail him. Learned counsel further contends that the offence under Section 377 of the Indian Penal Code could not be made out as no medical examination has been conducted.

3. From the perusal of pleadings on record and upon hearing learned counsel for the parties, it transpires that the present petitioner, namely, Darshan Lal is the Manager and looking after Dargah Peer Baba Nishan Shah Wali. Petitioner, initially, lodged a complaint with regard to an alleged occurrence

that took place on 8.10.2015 and the allegations are that Amit Kumar, Sunny Mahajan, Anil Kumar and Pardeep Sharma entered the residential premises of the petitioner and under the threat of weapons clicked nude photographs of the petitioner and also forced him into acts of unnatural sex. The video recording was also done on a laptop. Thereafter, a sum of ₹25 lacs was demanded for deleting the video. An envelope containing a sum of ₹1,50,000/- was taken away by the four afore-noticed persons. After a few days, yet another demand was raised and a sum of ₹50,000/- was taken under threat. Petitioner asserted in his complaint that finally he came to terms with the situation and has lodged the complaint.

4. On the other hand, Pardeep Kumar and others also moved a complaint lodging that Darshan Lal (present petitioner) was indulging in illegal activities such as forcing the devotees to have oral sex with him in the premises of Dargah/Mazaar

5. Upon investigation and enquiry having been conducted in the complaints lodged by both sides, FIR No.4 dated 17.1.2016 was registered against the present petitioner as also against Pardeep Kumar and others.

6. In **State of M.P. & another v. Ram Kishna Balothia & another, 1995(2) RCR (Criminal) 85**, the Hon'ble Supreme Court examined the nature of the right of anticipatory bail and observed as under:

“We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was

no provision similar to Section 438 in the old Criminal Procedure Code.... Also anticipatory bail cannot be granted as a matter of right. It is essential a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21."

7. At this stage, it would not be necessary for this Court to comment and go into the findings of the enquiry conducted by the investigating agency. Be that as it may, the nature and gravity of accusation of the petitioner is rather serious. Allegations pertain to indulging in acts of unnatural sex by the petitioner while serving as care taker of a religious shrine. Even the place of occurrence i.e. the room of the petitioner is stated to be very much within the compound of the shrine. The impact of accusations and even grant of concession of pre-arrest bail to the petitioner is bound to have wide ramification and could affect a large number of people/devotees who keep faith and frequent the shrine. Viewed against the parameters laid down by the Apex Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra and others, 2011(1) RCR (Criminal) 126**, this Court is of the considered view that concession of pre-arrest bail cannot be granted to the petitioner.

8. It is a case which would require a deep and thorough probe and for which custodial interrogation of the petitioner may

well be warranted.

9. In view of the reasons recorded above, this Court does not find any infirmity in the order dated 30.1.2016 passed by the learned Sessions Judge, Patiala declining the relief of pre-arrest bail to the petitioner.

10. Petition is dismissed.

March 14, 2016

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to Reporter? (Yes/No)