

Criminal Misc. M- No. 37060 of 2016 (O&M)

Date of decision : April 27, 2017

Pawan

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. B.S. Tewatia, Advocate for the complainant.

LISA GILL, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 166 dated 20.09.2016 registered under Sections 323, 376, 452, 506 IPC at Women Police Station, Palwal, Haryana.

It is submitted that the petitioner has been falsely implicated in this case by the complainant/victim, who is 38 years old having two children. It is submitted that the petitioner and the victim are in fact related to each other. The victim is married to a relative of the petitioner. The victim's husband and the petitioner have a common ancestor (in the fourth degree). The petitioner is in possession of a piece of land in respect to which the complainant party is raising a dispute. However, it is fairly stated that at this stage no civil litigation is pending between the parties. The complainant side has only raised a claim in this respect. It is further submitted that there is a delay of three (03) days in the lodging of the FIR.

The alleged incident is stated to have taken place on 17.09.2016 at 8.30 p.m. whereas the present FIR is registered on 20.09.2016. Furthermore, the medical evidence on record proves that no injuries were suffered by the complainant thereby falsifying the averments in the FIR. It is submitted that the petitioner in order to display his bonafides had submitted himself to an examination as provided under Section 53-A Cr.P.C. for matching of his DNA with the samples lifted from the person/clothes of the complainant. As per report dated 28.12.2016, the blood samples offered by the petitioner have been returned on the ground that no semen was detected from the samples lifted from the clothes/person of the complainant. Learned counsel for the petitioner submits that the victim has intentionally concealed the relationship between the parties. The petitioner has joined investigation pursuant to order dated 18.10.2016 passed by this Court. He is not involved in any other case. It is, thus, prayed that this petition be allowed.

Learned counsel for the complainant as well as the State have opposed this petition stating that specific allegations have been raised against the petitioner. Learned counsel for the complainant, however, does not deny the pedigree table produced in Court today by learned counsel for the petitioner. The said pedigree table is taken on record subject to just exceptions.

Learned counsel for the State, on instructions, from ASI Khem Chand affirms that the petitioner has joined investigation in this case and is co-operating with the investigating agency. It is verified that the petitioner is not involved in any other case. Report dated 28.12.2016 wherein the blood samples offered by the petitioner have been returned, is not denied.

There are no allegations on behalf of the State that the petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

Keeping in view the facts and circumstances noted above but without expressing any opinion on the merits of case, it is considered just and expedient to allow this petition. Consequently, order dated 18.10.2016 is made absolute. It is, however, directed that the petitioner shall not try to contact the victim or any of the witnesses in any manner, directly or indirectly. In case, the petitioner is found to be misusing the concession of bail, liberty is afforded to the complainant/prosecution to move an appropriate application for cancellation of his bail.

It is reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

April 27, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No