

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M-37892 of 2017 (O&M)
Date of Decision: November 27, 2017

Shiv Deep Sharma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. A.S. Dhaliwal, DAG Punjab.

Mr. P.S. Ahluwalia, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.76 dated 14.09.2017, under Sections 354-A(2), 354A(3) of Indian Penal Code and Section 67 of Information Technology Act, registered at Police Station City-1, Mansa, District Mansa.

In brief, the facts are that on the statement of prosecutrix, an FIR was registered with the allegations that she was working as a teacher at Adarsh School. The petitioner was also working in the same school was harassing her by sending her obscene messages and videos on her mobile

phone and thus, tried to outrage her modesty. The petitioner also got one DDR No.25 dated 02.09.2017 registered against the complainant and other persons. In the said Kalandara, it was mentioned that in fact, the petitioner and the complainant were known to each other and in a relationship. The complainant took the mobile phone from the petitioner and did not return the same. The petitioner asked the complainant to return the mobile phone, but the complainant flatly refused to do so and the petitioner thereafter informed the complainant that he would lodge a report with the police. In order to lodge the complaint, he was going to his factory to get the bill and box of the mobile phone for making the complaint, but was attacked by the complainant along with her husband and two unknown persons. He was thereafter admitted in Civil Hospital Mansa and thereafter at Rajindra Hospital, Patiala.

Mr. S.P.S. Sidhu, learned counsel appearing on behalf of the petitioner would contend that a perusal of the CCTC footage obtained, which is in the possession of the police, would reflect that the complainant and other persons are giving beating to him and it is in order to avoid prosecution under the said DDR that a false complaint has been lodged against the petitioner. It is argued that the complainant is in possession of his mobile phone since 29.08.2017 and therefore, the question of him sending obscene photographs etc. would not arise.

Per contra, learned counsel appearing on behalf of the complainant submits that the petitioner herein has been harassing the complainant by sending unwarranted obscene messages and obscene videos from his whatsapp number to her mobile phone. The school where he has

taught i.e. Shaheed Udham Singh Education and Welfare Society has already terminated his services. It is argued that a status report has been filed by the respondent-State by way of affidavit of Mr. Karanveer Singh, PPS, DSP, Sub Division Mansa, in which it has been stated that the CD presented by the complainant was checked and it was found that the petitioner had sent/transmitted obscene porn material on her mobile phone and it was on this basis, that an offence under Section 67-A of Information Technology Act, 2000 was added to the above-said FIR.

Learned counsel appearing on behalf of respondent-State opposes the grant of anticipatory bail, while submitting that offences alleged against the petitioner are serious in nature.

I have heard learned counsel for the parties.

In the instant case, there are specific allegations against the petitioner-accused that he was sending obscene messages to the complainant, who is a lady, as such, apart from other sections, offence under Section 67A of IT Act has been added against him in the instant case. Section 67A of IT Act reads as under;-

“Section 67A - Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

The grant of anticipatory bail is a discretionary relief and the conduct of the petitioner has to be seen as well. In view of the peculiar facts and circumstances of the present case and nature/gravity of the offence, this court is of the considered view that no ground is made out to grant the relief of anticipatory bail to the petitioner herein. Accordingly, the petition in hand is hereby dismissed, being devoid of any merits.

However, anything observed hereinabove shall have no affect on the merits of the case, which is only for the purpose of deciding the anticipatory bail application.

November 27, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No