

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

Crl. Misc. M-2114 of 2018 (O&M)
Date of Decision: February 07, 2018

Mukesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG Punjab.

Mr. Arunjeet Singh Kakkar, Advocate
for the complainant.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 438 Cr.P.C.
for grant of anticipatory bail to the petitioner in FIR No.226 dated
29.10.2017, under Section 376 of Indian Penal Code, registered at Police
Station Division Kotwali, District Bathinda.

Learned counsel for the petitioner contends that the petitioner
herein has been falsely implicated in the present case, at the instance of one
Rohit, who was instrumental in sale of a house and there was some dispute
with regard to brokerage/commission of the said Rohit. It is submitted that
no allegation has been made by the prosecutrix against the petitioner in her
statement recorded under Section 164 Cr.P.C.

Per contra, learned counsel appearing on behalf of the respondent-State as well as learned counsel for the complainant argue that the petitioner herein has been specifically named in the FIR. It is contended that the offence alleged against the petitioner is serious in nature, therefore, the petitioner is not entitled to grant of anticipatory bail.

I have heard learned counsel for the parties and perused the record of the case.

A reading of the FIR would go on to show that the petitioner herein has been named in the FIR by the prosecutrix, as the person who has committed rape upon her. There are specific allegations against the petitioner herein that *he closed the doors of the ground floor and raped her (the prosecutrix)*. In her statement recorded under Section 164 Cr.P.C., the prosecutrix though specifically not named any person, but she disclosed that two persons met her at the bus stand, who told her that they would take her to the persons, who will arrange her marriage. However, the said two persons instead took her to a lonely place and raped her. It is further alleged by the prosecutrix that the said two persons also prepared a video, while committing rape with her and threatened her, not to disclose this incident to anyone.

At this stage, learned counsel for the petitioner places reliance upon an affidavit submitted by the prosecutrix (annexed with this petition) to the effect that the petitioner herein has not committed rape upon her. However, learned counsel appearing on behalf of the complainant disputed this fact and argued that the complainant is an illiterate lady and has not sworn in any such affidavit.

A reading of the statement of the prosecutrix recorded under Section 164 Cr.P.C. would also show that the complainant in the instant FIR is an illiterate lady, who used to put her thumb impressions. In the said statement, she has also stated that the police officials, who came to the hospital where her medical was conducted, also took her thumb impressions on some blank papers. Under these circumstances, once the complainant herself is denying execution of alleged affidavit, it is not helpful for the petitioner in any manner.

In the instant case, *inter alia* there are serious allegations of committing rape upon the person of prosecutrix and it is also alleged by the prosecutrix that while committing rape upon her person, a video was also prepared by the culprits.

The grant of anticipatory bail is a discretionary relief. The conduct of the petitioner and gravity of the offence committed has to be seen as well. In view of the peculiar facts and circumstances of the present case and the gravity of the allegations levelled against the petitioner herein, this court is of the considered view that no ground is made out to grant the relief of anticipatory bail to the petitioner. 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.

February 07, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No