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

Crl. Misc. M-21261-2018 (O&M)
Date of Decision:September 06, 2018.

Pawan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Ms. Munisha Gandhi, Sr. Advocate with
Mr. Vaibhav Sharma, Advocate
for complainant.

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JAISHREE THAKUR, J. (Oral)

This is a petition that has been under Section 438 Cr.P.C. filed for the grant of anticipatory bail to the petitioner herein in FIR No. 562 dated 15.07.2017 under Section 363, 366-A, 342, 354-D, 376(2) (n), 506 and 120-B of Indian Penal Code and Section 6 of POCSO Act and u/s 25, 54, 59 Arms Act registered at Police Station Surajkund, Faridabad, District Faridabad.

Learned counsel for the petitioner has argued that all allegations as set out in the FIR pertain to the brother of the petitioner namely Lakhan, who is in custody. It is also argued that initially in the

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statement that has been recorded under Section 161 Cr.P.C. before the Police Station Women, Sector 16-A, Faridabad, the prosecutrix had submitted that Lakhan had committed a bad act with her and threatened her not to disclose the said incident to anybody otherwise he would show the video of the same to others. In the said statement, it was stated that Lakhan had informed the petitioner about the fact that the father of the prosecutrix had found out and Pawan is the person, who dropped the prosecutrix to her home by stating that the incident should not be informed to anyone. In the said statement, she had submitted that she wanted to marry Lakhan.

It is also argued that in a subsequent statement recorded under Section 164 Cr.P.C. there is a categoric statement that it is Lakhan who had committed the offence under Section 376 of IPC and had reiterated the earlier version. In a supplementary statement recorded on 14.08.2017, it had also been categorically stated that Sheru and Pawan (the petitioner herein) had not committed any bad act with her. It is also argued that there is an FSL report on the record, which does not support the case of the prosecution, as the report shows that semen could not be detected on the exhibits.

Learned counsel for the petitioner further contends that the bail application has been declined on th

e ground that there is gravity of offence in the role assigned to the petitioner herein and the fact that he is the real brother of the co-accused Lakhan.

It was also taken note of the fact that there are four other FIRs registered against the applicant-petitioner and that he had been evading arrest in these FIRs. It is also contended that the said four FIRs do not

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pertain to any heinous crime, as is been attributed, however, these are pertaining to cutting of trees and these are matters pending before the Environmental Court.

Learned Sr. Advocate appearing on behalf of the complainant submits that the petitioner has played an active role in the commission of the act, insofar he was well aware of the commission of the crime and had also helped Lakhan in bringing the the prosecutrix back from the farmhouse where she had been kept and he is equally guilty as Section 120-B has been invoked. It is also argued that in case the petitioner herein is allowed anticipatory bail, the prosecutrix, who is sought to be examined, would be subjected to threats.

Learned counsel for the respondent-State supports the arguments as raised by the learned Sr. Counsel for the complainant.

I have heard the learned counsels for the parties and have also perused the pleadings of the case.

Prima facie a reading of the statement, that has been recorded under Section 161 and 164 Cr.P.C. as well as the supplementary statement recorded do not reflect any overt act on behalf of the petitioner herein. The complainant has again and again stated that no bad act has been committed by Sheru and Pawan. The role assigned to the petitioner herein as mentioned in the supplementary statement recorded on 14.08.2017 in which it is stated that Lakhan had brought Sheru and Pawan along with him to beat the brother of the complainant .

In view of the facts that the petitioner is not required for custodial interrogation and has joined the investigation, without

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commenting on the merits of the case, the petition is allowed and order dated 18.05.2018 granting interim bail to the petitioner is made absolute subject to the conditions laid down in Section 438 Sub Section 2 Clauses (i) (ii) and (iii) of the Code of Criminal Procedure.

An apprehension has been raised by the learned counsel for the complainant that in case the petitioner herein is not arrested, there is every likelihood that the prosecutrix, who is sought to be recalled as a witness under Section 311 Cr.P.C. would be put to jeopardy or be threatened.

The bail is granted with a condition that the petitioner will not enter the village and he will not make any attempt to contact the complainant or the family of the complainant either telephonically or through any IT based message or via any messenger. It is further made clear that in case there is any such attempt to contact the complainant or her family members or to influence the witnesses, in any manner whatsoever, the complainant will be at liberty to approach this Court for cancellation of the anticipatory bail granted to the petitioner today.

(JAISHREE THAKUR)
JUDGE

September 06, 2018
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Whether speaking/reasoned Yes
Whether reportable Yes/No

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