

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

Crl. Misc. No.M-26471-2018

Date of Decision : 21.06.2018

Chander Shekhar Rawat

.....Petitioner

versus

State of Haryana

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Wishwajeet Singh, Advocate
for the petitioner.

Mr. Keshav Pratap Singh, Advocate
for the complainant.

RAJBIR SEHRAWAT, JUDGE (ORAL)

The present petition has been filed by the petitioner seeking anticipatory bail in case of FIR No.241 dated 16.04.2018 under Sections 499, 354-D, IPC and 67-A of IT Act, registered at Police Station Surajkund, District Faridabad.

In the matter, the above said case was registered against the petitioner and some other persons for posting the obscene post regarding the complainant on the Facebook accounts of the persons, including the petitioner. The material as placed on the Facebook accounts and published in various sites is, as given below:

- A. Shiv Kumar Mudgal- *“Kal Faridabad se ek vidhayk ji Chandigarh me khoobsurat Mahila Adhyaksh ke saath Moj Masti Krte hue Dekhe Gye Hain. Ram re Ram”.*
- B. Chander Shakher- *“Sir Faridabad se BJP Women President Kaun Hai”.*
- C. Shiv Kumar Mudgal- *“Aapko Pta Hi Hoga Bhaishab”.*
- C(i) Chander Shekher - *“Na apko to pata hi nahi hai jaise Shiv Kumar Mudgal ji, apme dum nahi hai mai bolu”.*
- D. Chander Shakher- *“ Ya to aap photo dal do nahi to mai dalta*

hu”.

- E. Sanjay Kapoor(City Mail)- “Khasit Charchao me vidhayk v Mahila Netri ki prem lila”.*
- F. Naveen Gupta, (Metro Plus)- “Bhajpa Samrthit Vidhayk v hare Bhare Kshetr Ki Mahila Netri ki rangraliyo ne machaya tufan”.*
- G. Naveen Dhamija, (Haryana Bhaskar.com)- “Vidhayak Dwara Rangraliyan manane ka mamla charchao me”.*

Since the above said allegations contained allegations of immorality against the complainant, alleging obscenity against her, therefore, the present FIR was lodged by the complainant against the accused persons, including the petitioner.

It is worth mentioning here that all other accused have since been taken into custody and released on regular bail. However, the petitioner has not so far joined the investigation. The petitioner had moved application for anticipatory bail before the Court of learned Additional Sessions Judge, Faridabad. But the same was dismissed by the Court below vide the order dated 14.06.2018. While dismissing the application for anticipatory bail filed by the petitioner the Court below has written as under:

“If such posts are read by a common man, he would streightway jump to the conclusion that comments posted on the news item refer to none other than Women President of Faridabad. The material is obscene in nature and therefore, ingredients of Section -67A of IT Act are present. It is not disputed that said face book post was uploaded by applicant”.

Since the petitioner was not granted the concession of anticipatory bail by the court of Additional Sessions Judge, Faridabad, therefore, the present petition has been filed by the petitioner. While

arguing the case learned counsel for the petitioner has submitted that the only role alleged against the petitioner is that he instigated his co-accused to put the picture of the complainant on the social networking website which is not an offence under any provision of the Indian Penal Code. Further, it is contended that the post, posted on the social networking site by the petitioner does not contain any content of obscenity, therefore, Section 67-A of the Information Technology Act 2000 is not attracted. Still further, it is contended by the counsel for the petitioner that Section 499 of the IPC alleged against the petitioner is bailable offence. In view of this, prayer for grant of anticipatory bail has been made.

On the other hand learned counsel appearing on behalf of the complainant has submitted that the petitioner has asserted in the Facebook post that he has the photograph of the complainant containing the contents of social conduct of the complainant, which he had dared to put on the social networking site while conversing with Shiv Kumar. Still further, it is submitted that the identity of the complainant was duly disclosed by the accused; including the petitioner; because the petitioner himself had referred to the President of women wing of Bhartiya Janata Party, Faridabad. It is submitted that there is only one President of Women Wing of BJP in Faridabad and most of the people of the area are aware of the identity of the President of the B.J.P.women wing. In this manner, the petitioner has actively contributed towards the character assassination of the complainant with a positive assertion that he has the photograph of the complainant reflecting the alleged obscenity on the part of complainant.

It is further submitted that unless the petitioner is taken into

custody it is not possible to recover the material claimed by the petitioner to be in his possession regarding the alleged immoral conduct of the complainant, if any. Unless this recovery is effected it cannot be confirmed what material the petitioner has referred to in the post, which he might have concocted against the complainant to spoil her character & reputation in public.

Having heard the learned counsel for the petitioner as well as the learned counsel for the complainant, this Court is of the considered opinion that the learned Court below has not committed any illegality by declining the anticipatory bail to the petitioner. It is well-settled law that the anticipatory bail cannot be claimed as a matter of right. The police has an absolute right to investigate a cognizable crime by taking the person in custody; if the police suspects that such a person is involved in commission of the cognizable offence. Still further it is well-settled that the custodial interrogation is qualitatively and quantitatively different than the interrogation conducted with the accused having protection against the arrest through a Court order.

In the present case, the police have already interrogated the other accused and it would definitely like to corroborate or co-relate that investigation by interrogating the petitioner as part of the chain of the events leading to the publication of the obscene posts. The police would also be requiring the custody of the petitioner for affecting the recoveries of the material claimed to be possessed by him which he had exclaimed to put on the social networking site. In these circumstances, it would not be appropriate for this Court to scuttle the police investigation in a matter

where character assassination of a lady having a public and social standing is involved. Further this Court finds itself unable to agree with the contention of the learned counsel for the petitioner that the offences as alleged in the FIR are not made out against the petitioner. Whether the offences are made out against the petitioner or not; would be a matter to be considered after the investigation is completed by the police. Otherwise also on the face of it the record shows that the petitioner has actively participated in the series of the acts which led to publication of material against the complainant which indicated and reflected towards the alleged sexual conduct on the part of the complainant in explicit terms. Moreover, it is only after the investigation is completed that it would be clear which offences are made out against the petitioner. At this stage, and from the contents of the FIR, commission of the offence by the petitioner; as alleged in the FIR; cannot be ruled out. Therefore, the present petition is dismissed being devoid on any merit.

However, since all the other co-accused has already been granted regular bail of the Trial Court, therefore, it is directed that in case the petitioner is arrested or he surrenders before the Court and moves an application for regular bail then same shall be considered by the Trial Court expeditiously.

21st June, 2018

Manju/Shivani Kaushik

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: No