

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

CRM-M No. 30341 of 2018

DATE OF DECISION :- August 08, 2018

Suresh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Anandeshwar Gautam, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

This petition for pre arrest bail has been filed by petitioner Suresh Kumar, an accused in F.I.R. No. 31 dated 4.5.2018 for offences under Sections 354, 376, 377 IPC (Section 3 of SC&ST Act added later on) registered with Police Station Women, District Kurukshetra.

Briefly stated the facts of the case as per prosecution story are that complainant-victim (name withheld to conceal the identity) submitted a written complaint to SSP, Kurukshetra wherein she stated that she along with her family are staying at Didar Nagar, Kurukshetra near old Dronacharya School in a rented accommodation; that Suresh had been residing in their neighborhood. According to the complainant she had been living with her maternal grand mother (Nani) Roshni Devi since childhood. Since she is still residing in Didar Nagar on rented accommodation; that their neighbourer Suresh Kumar came to their house on 15.4.2015 and told

maternal grand mother of the complainant that her grand daughter was very sharp in studies and she should be left with him and he would get a job for her; that maternal grand mother of complainant sent her to Sports Academy of Suresh reposing trust in him and the complainant started learning Archery from Suresh. Suresh firstly took her to Himachal Pradesh for sports, later on accompanied her to Pondichery, Jaipur and Rajasthan and on return took her to Kurukshetra. Suresh made the complainant work hard to secure some position. According to the complainant in the Academy during evening time Suresh used to perform unnatural sex with her, however, she stopped going to him from 8.1.2017 onwards. Thereafter Suresh sent indecent messages to the complainant on mobile phone threatening that either the complainant should come to him or he would upload her blue film on internet and keep on blackmailing her. On finding opportunity he used to perform sex with the complainant. The complainant sought taking of action against Suresh.

On receipt of this complaint, statement of the victim was recorded by the police on 25.3.2017 in which she gave clean chit to Suresh stating that he had not done anything wrong with her and written complaint submitted by her was based upon wrong facts rather her parents had pressurized her to submit the complaint. She did not want to go with her parents and wanted to go with Suresh; that she apprehended threat to her life at the hands of her parents.

Her statement was got recorded under Section 164 Cr.P.C. by Judicial Magistrate Ist Class, Kurukshetra on 25.3.2017, in which she reiterated the same version. SHO of Police Station Women Kurukshetra

then submitted a report to the effect that in view of the statement made by the complainant and investigation, no offence was made out, therefore, file be consigned to the record room. After statement of the complainant-victim was recorded her custody was handed over to Suresh Kumar-accused. Thereafter the complainant had submitted a written complaint to Superintendent of Police, Kurukshetra seeking taking of action against his family members and relatives stating that Suresh had not done anything wrong with her. She had filed a private complaint against her such family members in that regard. She had got married to one Harikesh son of Ramphal of Meham, Rohtak and her marriage was got registered. Thereafter she got registered F.I.R. No. 31 dated 4.5.2018 under Sections 354, 376, 377 IPC registered against Suresh Kumar levelling allegations of doing indecent acts with her, performing unnatural sex with her, sending her indecent messages on her mobile phone, threatening to upload her blue film on social media and raping her repeatedly. That she had submitted a written complaint dated 25.3.2017 to the police but under threats of Suresh that he would kill her family members and would make public her blue film she gave in writing to the police that she did not want any action against him and complaint was filed, however, Suresh again established illicit relation with her got her married with Harikesh son of Ramphal of Meham. On 18.9.2017 he sent her husband to Chandigarh to collect documents and later on under threat raped her. He did so again on 2.10.2017 and he has been making threatening calls to her. She thought of taking against Suresh Kumar.

Formal F.I.R. was registered and thereafter investigation in the

case started.

Apprehending his arrest in in the case, the accused had approached to the Court of Sessions by moving an application for grant of pre arrest bail which was assigned to Additional Sessions Judge (Exclusive Court For Heinous Crimes Against Women), Kurukshetra. Vide order dated 19.5.2018 his such petition was dismissed as such he has approached this Court by way of filing the present petition which is being resisted by the State.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

Although learned counsel for the petitioner has contended that complainant had submitted a complaint on similar allegation against the petitioner to the police. However, she had made statement before the police refuting such allegations and blaming his family members for getting such complaint filed from her. After probe it was filed of. Now she has lodged the F.I.R. on the same allegations. Therefore, the allegations are doubtful. Custodial interrogation of the petitioner is not required under the circumstances, therefore, he should be granted pre arrest bail. Whereas, State counsel stoutly opposes the request.

Learned counsel for the petitioner has referred to authority “Sushil Sharma @ Suhil Sharma and another versus The State of Jharkhand

and another 2018 (1) JBCJ 138” by the Jharkhand High Court, wherein while dealing with the scope of anticipatory bail it was observed when a case was lodged by a opposite party under Sections 457/380 IPC in which the names of appellants were appearing in the body of F.I.R. the police submitted a charge sheet and on finding that case to be untrue initiated proceedings under Sections 182/211 IPC against the informant. He further referred to authorities “Satya Narain versus State of Rajasthan 2013(53) R.C.R. (Civil) 515, Parkash Chandra versus State of M.P. 2014(2)M.P.W.N. 272, Dr. Subash Kashinath Mahajan versus The State of Maharashtra and another” of the Hon'ble Supreme Court in support of his contentions

Whereas, learned State counsel has contended that the prosecutrix has been under great fear and influence of the accused and due to the fear she did not pursue the matter and when after some time the influence of accused started vanishing and the accused committed rape with her several times, then she reported the matter again to the police seeking action against him and formal F.I.R. was registered.

In the F.I.R. the complainant has contended that under threat of accused she did not pursue the matter when she had submitted 1st complaint to the police, however, later on when accused again started having forcibly sexual intercourse with her on several occasions she reported the matter to the police. As it comes out it was under pressure and threat of the accused that the complainant did not pursue the earlier complaint submitted by her to the police and made statements giving the clean chit before the police as well as before Magistrate and further had rather blamed his family members and relatives for getting the complaint filed against accused from her. The

accused cannot take advantage of his such wrongful acts coming up with a straight face and saying that since the allegations levelled by the complainant in the 1st complaint were not found to be correct as such she should be disbelieved with regard to truthfulness of the allegations in the F.I.R.

The allegations against the accused are very serious and grave of having unnatural sex with the victim besides having forcible sexual intercourse with her on several occasions. Custodial interrogation of the petitioner-accused is definitely required for complete and effective investigation and in case it is denied to the Investigating Agency that shall leave many loopholes and lacunae which is uncalled for.

There is no merit in the petition, therefore, the same stands dismissed.

(H.S. MADAAN)
JUDGE

August 08, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No