

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 37661 of 2018 (O&M)

Date of decision : 13.09.2018

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Ashish Soni

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vijay Lath, Advocate
for the petitioner.

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H. S. Madaan, J. (Oral)

Petitioner – Ashish Soni, an accused in FIR No. 62 dated 21.5.2018, for an offence under Section 376 IPC registered with Police Station Balachaur, District SBS Nagar, Punjab, had filed a petition for pre-arrest bail in this Court. The said petition bearing CRM-M-25160-2018 was dismissed vide detailed order dated 20.8.2018. Thereafter, the petitioner has filed a second petition for pre-arrest bail for the reason that the Investigating Officer had appeared before this Court on 13.8.2018, on whose instructions Assistant Advocate General had stated that medical examination of petitioner had been conducted and he had joined the investigation but

he was required for further investigation. The case was adjourned to 20.8.2018 for pronouncement of order, on which date, the petition was dismissed. That the petitioner after 13.8.2018 was called by the Investigating Officer on 16.8.2018 to join the investigation. Accordingly, the petitioner joined the investigation in the morning and was relieved in the evening when the Investigating Officer orally told him that the investigation was complete on their part. These events took place subsequent to addressing of arguments on 13.8.2018, giving rise to a fresh cause of action to the petitioner to avail of the concession of anticipatory bail and when petitioner came to know that a day before yesterday, the exact date of birth of the prosecutrix namely, Amandeep Kaur to be 13.7.1987, whereas that of petitioner is 14.10.1989 and they were having physical relationship for the last 12 years, the FIR was lodged on 21.5.2018. Which means that in the year 2000, the prosecutrix was aged more than 18 years and as such a major, whereas the petitioner was aged 16 years, 6 months and 21 days and the petitioner was minor. In that way, rather the prosecutrix had sexually exploited the petitioner. Therefore, the second petition for pre-arrest bail is maintainable.

Learned counsel for the petitioner has referred to judgments reported as *Runu Roy vs. State of Assam 2006 (37) AIC 742* and *Yuvraj Gaud vs. State of Madhya Pradesh and another 2005 (1) R.C.R. (Criminal) 618*, in support of his contention that the second petition is maintainable.

After hearing learned counsel for the petitioner and going through the record and authorities referred to by him, I find that

the second petition is not maintainable, the first having been dismissed vide detailed order dated 20.8.2018, with no major change in the circumstances taking place between 20.8.2018 when the petition was dismissed and 28.8.2018 when the second petition was filed.

As regards the submission made that on 13.8.2018, learned State counsel, on instructions from the Investigating Officer had made a statement that petitioner was required for further investigation, a perusal of the order dated 13.8.2018 goes to show that no such statement of State counsel has been recorded regarding the submission and that after 13.8.2018 the Investigating Officer had called the accused to join the investigation; he went there and the Investigating Officer orally told him that now the investigation was complete on their part. These events do not appear to be plausible and convincing. The Investigating Officer orally telling the accused that the investigation was complete on their part does not make any sense, while the State counsel, on instructions from the Investigating Agency was seeking custodial interrogation of the petitioner. It seems to be a fabricated story just to show that some change in circumstances has taken place. If it had actually happened, then the petitioner could have moved an application in the Court, in the meanwhile to apprise it of the said position. Then the facts could have been got verified from the State through its Investigating Agency. But it was not so done. In that way no fresh cause of action arose to the petitioner.

Regarding the second ground taken that 10 years earlier

the prosecutrix was major while the petitioner was a minor and the prosecutrix was sexually exploiting the petitioner, it again seems to be a product of a fertile mind. It is certainly not the case of the prosecution that from the first day, the prosecutrix got acquainted with the accused; they had developed physical relations. As per the prosecution story they were acquainted for last 10-12 years. That just not mean that they started having physical relations right from the beginning or by way of such type of calculations, an inference can be reached that it was not the petitioner accused who sexually exploited the prosecutrix, but rather the things were otherwise. There are clear allegations of petitioner having sexual intercourse with the prosecutrix repeatedly over a considerable period of time on the promise of contracting marriage with her. There is absolutely no change in the circumstances and no fresh ground is there justifying the filing of second petition for grant of pre-arrest bail in this case. The grounds mentioned are totally unconvincing. The authorities referred are not applicable to the facts and circumstances of the present case.

Therefore, the petition being not maintainable stands dismissed.

13.09.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No