

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-39868 of 2018
Date of Decision: 17.9.2018**

Amit Gupta

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Vishavjit Singh, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. Karanvir Singh Khehar, Advocate
for the complainant.

ANITA CHAUDHRY, J

The petitioner is seeking anticipatory bail in case FIR No. 416 dated 31.8.2018, registered under Sections 509 IPC and Section 67-A of Information and Technology Act, 2000, Police Station Sector-5, Panchkula.

The petitioner runs a chemist shop. The case of the petitioner is that on the night of 29.8.2018, his phone developed a technical snag and he handed over the same to a stranger when he was attending a wedding and probably the stranger took out the sim from the phone and then gave the phone back to him. It is further the case of the petitioner that he was shocked to learn that certain messages through whatsapp have been posted from his phone in a whatsapp group which he later learnt were obscene.

The case of the petitioner is that the phone was not in his possession or the

messages were forwarded on account of technical snag or someone else had played mischief. It is also the case of the petitioner that after having learnt that the obscene messages had gone, he apologized to the group members and also deleted some messages and some messages could not be deleted.

Learned senior counsel for the petitioner contends that there was no intention and a plea had been taken in the Court below and even in the petition filed here is that the phone was handed over to a stranger and the messages were sent from his phone accidentally and he had no intention to hurt the sentiments or post the obscene material and he had expressed his apology to the group members the same morning. The counsel admits that there are more than dozen women who are members of the group.

Counsel for the complainant opposes the prayer and urges that if the messages had been wrongly posted, he could have immediately deleted the same before it came to the notice of all and the petitioner is blaming a stranger and different arguments are being presented and before the Court below the statement was that it was the stranger who had forwarded the obscene photographs. It was urged that the whatsapp videos which have been sent are lascivious and obscene and it cannot be taken casually and there are women members in this group and they have the videos on their phone for perusal and there are 65 messages which were sent.

State counsel submits that the phone needs to be recovered.

The petitioner accepts that 65 vulgar/porn videos had been forwarded by him at night when he was attending a wedding. There are women members in this whatsapp group. The State promptly did register the FIR on the complaint by a woman member. The petitioner has realized

later that the videos should not have been sent. He did not delete the same and sent the apologize nine hours later. By then, every member of the group had seen the messages.

The petitioner on the one hand urges that the messages were sent by a stranger but before this Court the submission was that it was the petitioner who had sent the same. The allegations are serious and should not be taken lightly. Porn videos, nude/semi-nude pictures were sent by the petitioner. There are 65 videos/pictures which at one click could not have been forwarded. It is not a case where the phone was tempered or it was a malware. Recovery of the phone is to be effected. No case for anticipatory bail is made out.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 17, 2018

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No