

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

**CRM-M-36588-2019
Date of Decision: 11.09.2019**

Keshav

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARI PAL VERMA

Present : Mr. Keshav Pratap Singh, Advocate for the petitioner.

Ms.Priyanka Sadar, AAG, Haryana.

Mr.Sanjay Vashisth, Advocate for the complainant.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.40 dated 01.06.2019, under Sections 328, 354-D, 376, 506 of IPC(Section 67(1) of IT Act, 2000 was added later on), registered at Police Station Women Palwal, District Palwal

The aforesaid FIR was registered at the behest of complainant, a victim, in the case. As per FIR, one lady Madhu was a customer at Beauty Parlour run by the mother of the complainant. The marriage of sister-in-law(*Nanad*) of Madhu was solemnised about four years back and the prosecutrix along with her mother had gone there to attend the marriage.

The petitioner, who is brother of Madhu, had seen the prosecutrix in the said marriage. He had taken the name and address of the prosecutrix and thereafter sent a friend request to her on facebook. About three years back from the date of registration of the FIR, the petitioner along with his sisters Madhu and Kotal had come to the house of prosecutrix at their parlour and made acquaintance with family members. He invited the family of the complainant to attend the marriage of his sister-Kotal, fixed for 22.02.2017 and thereafter started meeting them frequently. After passing her 12th examination on 14.07.2017, the prosecutrix sought admission in B.Sc. Life Science in Zakir Hussain Delhi College, where the petitioner extended help to the complainant at his own. When the prosecutrix started residing as a PG in Luxmi Nagar(Delhi), petitioner also sought admission in Delhi to take coaching and hired a room on rent in Nirankari Colony. He used to visit PG of the prosecutrix and many times he requested her to visit his room at Nirankari Colony but the prosecutrix always denied. However, on 27.02.2018 the petitioner again requested her to come to his room and on his call she visited Nirankari Colony where the petitioner was residing. During this visit, the petitioner served her some food to eat and after eating the same she became unconscious. In a planned manner the petitioner took advantage of this unconscious situation of the prosecutrix and without her consent, developed physical relations with her and also took her nude photographs. However, on regaining consciousness the prosecutrix found that rape has been committed upon her, upon which she told the petitioner that she will file a complaint to the police, but when the prosecutrix said so, the petitioner showed her nude photographs to her on his mobile phone and threatened her that in case she will report the matter to the police or disclose it to any body,

then he would upload the photographs on the internet. The prosecutrix got scared and for the sake of her family reputation did not file the complaint against the accused. After the incident of 27.02.2018, the petitioner started blackmailing the prosecutrix and started calling her at different places. He gave different instructions and also used bad language. The process of blackmailing and torturing her continued at the behest of accused. As and when the prosecutrix used to refuse to make physical relations with the petitioner, he used to threaten her that he would make her photographs viral on the internet. Thus she was blackmailed continuously for long time and unlimited times rape was committed upon her by the petitioner in his room at Nirankari Colony and even at his house in Palwal. On 01.04.2019 having been fed up with all this, the prosecutrix decided to shift from Delhi and started living with her Nana and Nani in Ballagbgharh from where she used to commute daily to her College in Delhi by Metro train. On 06.04.2019 when she came to her home at Palwal, the petitioner had come to know about this and he again started blackmailing her by showing the photographs. In this manner he committed rape upon her. The prosecutrix even stopped attending phone calls of the petitioner. Thereafter, on 25.05.2019, 26.05.2019 and 27.05.2019 the petitioner informed the mother of prosecutrix about the nude photographs and physical relations and threatened that either the prosecutrix should keep on making physical relations with him otherwise the photographs would be made viral. He also threatened that in case the matter is brought to the notice of the police, the family of prosecutrix would be killed or the prosecutrix will be given burns by throwing acid upon her. On 28.05.2019 the petitioner even sent the pictures of victim to her father on his mobile.

Counsel for the petitioner, while making reference to various WhatsApp messages exchanged between the parties (Annexure P-1) and photographs (Annexure P-2), has argued that relations between the petitioner and the prosecutrix, if any, were consensual and they have attained the age of majority. In this manner the prosecutrix remained a willing party. As far as the offence under the IT Act is concerned, the petitioner is ready to join the investigation though the offence is non-bailable and the punishment is up to 5 years for the first offence. Petitioner is about 25 years of age and irrespective of the fact that anticipatory bail has been filed on merit, he is ready to solemnise marriage with the prosecutrix. Therefore, offence under Section 376 IPC is not made out as the prosecutrix was a consenting party.

Counsel for the complainant has argued that the prosecutrix was fed up with the repeated calls of the petitioner and stopped receiving his calls but he still continued to harass her. Petitioner has committed serious offence of rape by blackmailing her. He had taken obscene pictures of prosecutrix and sent them on mobile of her father.

I have heard counsel for the parties.

The prosecutrix, who is present in Court, has been interacted in the chamber. She is in trauma and very consistent about her stand. She has submitted that while taking advantage of the situation where she was made unconscious, the petitioner has taken her nude photographs and thereafter had been exploiting her repeatedly and succeeded in developing physical relations with her under the threat that in case she refuses sexual advances, he will make the photographs public. The argument of learned counsel for the petitioner that the petitioner is ready to join the investigation so far as

offence under the IT Act is concerned, cannot be accepted at this stage. The

allegations against the petitioner are serious enough that he has taken photographs of the prosecutrix at the first available opportunity, when she started staying alone in PG in Luxmi Nagar while calling her in his room. The allegations against the petitioner are that he continued to exploit her physically on the basis of these photographs, so taken by him and having been fed up with this continuous harassment, she at one point of time left her PG from Luxmi Nagar and shifted to her Nana's house at Ballabhgarh and had to commute from there to her College in Delhi. While sending obscene pictures of the prosecutrix to her father petitioner has supplemented gravity to the offences.

Considering the seriousness of the allegations, no ground for the grant of anticipatory bail is made out.

Dismissed.

(HARI PAL VERMA)
JUDGE

11.09.2019
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No