

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-37311-2019 (O&M)
Date of Decision:- 5.12.2019

Sumit @ Kalu

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Deepender Singh, Advocate, for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G. Haryana,
assisted by ASI Suesh.

GURVINDER SINGH GILL, J. (Oral)

1. Petitioner-Sumit @ Kalu, seeks grant of anticipatory bail in a case registered vide FIR No.22, dated 3.4.2019, registered at Police Station Women Police Station Rewari, District Rewari (Haryana), under Sections 376, 506 IPC.

2. Mr. Manoj K. Tanwar, Advocate has appeared on behalf of the complainant and filed power of attorney. The same is taken on record.
3. The FIR was lodged at the instance of the victim wherein it has been alleged that on 23.3.2019 her husband had left home for work. It is stated that Sumit's wife had expired and his son has been residing with the complainant. After her husband had left, Sumit came to their house in morning at about 7.15 am and caught hold of her from her back and when she asked him as to what he was doing, he stated that he had killed her husband and thereafter he forcibly committed a wrong act with her. When the complainant objected to the same he threatened her not to disclose it to anybody failing which he would eliminate other members of her family. Later the complainant disclosed about the incident to her husband on 31.3.2019 and subsequently the matter was reported to the police.
4. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that the complainant is a matured lady who was having consensual physical relations with the petitioner but subsequently on account of some differences, the present FIR came to be lodged. Learned counsel for the petitioner in order to hammer forth his aforesaid contention has drawn the attention of this Court to the statement of call details (Annexure P-3) alleged to have taken place between the petitioner and the prosecutrix. Learned counsel has also referred to the text of WhatsApp conversation (Annexure P-2), allegedly between the

petitioner and the complainant and has submitted that the said conversation clearly shows that the complainant and the petitioner were regularly in touch with each other and in fact even after the date of alleged incident i.e. on 23.3.2019, there has been exchange of calls between the complainant and the petitioner.

5. Opposing the petition, the learned State counsel assisted by learned counsel for the complainant has submitted that since specific allegation have been levelled against the petitioner regarding forcible sexual intercourse, no case for grant of bail is made out. Learned counsel for the complainant has submitted that in fact the call details being referred to by the learned counsel for the petitioner i.e. calls between telephone No.8278084876 (belonging to the petitioner) and telephone No.9466581581 are in fact calls exchanged between the petitioner and his son as son of the petitioner was residing with the complainant since the petitioner was earlier friend of her husband.
6. I have considered rival submissions addressed before this Court. It is not disputed that the complainant is a matured lady. Although, the call details simply suggest that there have been exchange of calls between two telephones but the WhatsApp text conversation would reflect that the conversation is not such which can be said to have taken place between a father and a son. It is not disputed that phone No. 9466581581 belongs to the complainant. In these circumstances it would be debatable as to whether it is a case of forcible sexual intercourse or as to whether it is a case of consensual physical relations. Bearing in mind the aforesaid facts and circumstances, in

my opinion, it is not a case warranting custodial interrogation. The petition, as such, is accepted and interim directions issued vide order dated 5.9.2019 are made absolute subject to the condition that the petitioner shall appear and join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

December 5, 2019
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No