

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

(1) **CRM-M-38415-2019 (O&M)**

Rachna ... Petitioner

Versus

State of Haryana ... Respondent

(2) **CRM-M-41457-2019 (O&M)**

Shishpal ... Petitioner

Versus

State of Haryana ... Respondent

Date of Decision:- 6.12.2019

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jagjit Singh Gill, Advocate for the petitioner(s).

Mr. Ashok Singh Choudhary, Addl. Advocate General, Haryana.

Mr. Aditya Sanghi, Advocate for the complainant.

GURVINDER SINGH GILL, J.

1. This order shall dispose of the aforesaid two petitions filed on behalf of Rachna and Shishpal seeking grant of anticipatory bail in a case registered against them vide FIR No.88 dated 10.08.2019 under Sections 323/342/376-D/120-B/109/506 IPC at Police Station Women Sirsa, District Sirsa.
2. The FIR was registered at the instance of Surender Rani wherein it has been alleged that she was married to Shishpal on 4.12.2004 and was blessed with two children out of the wedlock. However, her husband used to torture her.

It is alleged that Rachna, who is residing as a tenant at Kanganpur road, Bharat Nagar, Gali No.5, used to organize gatherings in the name of 'Mata' and her husband used to attend the same. It is alleged that petitioner Shishpal used to bring Rachna to complainant's home and used to lock her and the children in a room. It is alleged that on 6.8.2019, Shishpal took her along to the house of Rachna where after taking her inside, Rachna and Shishpal closed the door from inside. It is alleged that Iqbal was already present there and that Rachna and Shishpal removed her clothes and handed her over to Iqbal. It is alleged that her husband caught hold of her feet while Iqbal raped her. It is further alleged that the accused even held out threats to eliminate her.

3. The learned counsel representing the petitioners has submitted that the accused have falsely been implicated in the present case and it is highly unlikely that petitioner Shishpal would get his own wife (complainant) raped from somebody before his eyes. It has further been submitted that Iqbal, who is alleged to have raped the complainant is none else but husband of Rachna and it is unlikely that Rachna would have prompted her own husband to establish physical relations with another lady (complainant). The learned counsel has submitted that it is apparently a case where the prosecutrix, being aggrieved by the relations between her husband Shishpal and Rachna had chosen to lodge the present FIR falsely in order to teach them a lesson.
4. The learned counsel for the petitioners has further submitted that the credibility of the complainant is highly doubtful inasmuch as she on an earlier occasion had levelled allegations against her '*Jeth*' (brother-in-law) in

FIR No.239 dated 6.3.2014 under Sections 323/341/294/506/ 147/148/149 IPC, Police Station City Sirsa but subsequently, she turned hostile leading to acquittal of her brother-in-law. It has, thus, been prayed that the petitioners in view of peculiar circumstances deserve the concession of anticipatory bail.

5. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that in view of specific allegations levelled against the petitioners who had played an active role in getting the complainant raped from co-accused Iqbal, no case for grant of anticipatory bail is made out.
6. I have considered rival submissions addressed before this Court.
7. While it is the co-accused Iqbal, who is alleged to have committed rape upon the prosecutrix, the role attributed to the petitioners is that they had facilitated the commission of crime inasmuch as the petitioners are alleged to have taken the prosecutrix to the room where Iqbal was present. However, the manner in which the allegations have been levelled to the effect that the petitioner Shishpal got his own wife raped from co-accused Iqbal and that even the wife of Iqbal was party to the same would really be required to be established by leading cogent evidence, since such kind of act is normally not expected from a husband or a wife. In any case, since the petitioners have joined investigation and nothing is required to be recovered from them, their custodial interrogation is not warranted. Both the petitions, as such, are accepted and the interim directions issued by this Court vide orders dated 10.9.2019 and 26.9.2019 are made absolute subject to the

condition that the petitioners shall continue to appear before the Investigating Officer as and when called upon to do so and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

6.12.2019

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No