

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

CRM-M No.17694 of 2020

Date of Decision : 26.08.2020

Avinash Soni

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Tarun Dhingra, Advocate and
Mr. Harsh Bunker, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 438 of the Code of Criminal Procedure seeking Anticipatory Bail on behalf of the Petitioner in case FIR No.74, dated 17.06.2019, registered under Sections 506 of the Indian Penal Code (for short, 'the IPC') and Sections 67A, 72 of the I.T. Act, at Police Station Women Sector 51, District Gurugram.

2. Notice of motion.

3. Mr. Anmol Malik, Deputy Advocate General, Haryana to accept notice on behalf of the Respondent/State. A copy of the Paper-book be handed over to him.

4. The FIR was lodged by a Lady who is an employee in a Company named as "Star Maker". The allegation in her Complaint is that the Petitioner who is one of the Users of the App., has tampered with her photographs and has pasted her face with objectionable pictures and has also opened 150 fake accounts in her name and put those photos in

those accounts, apart from abusing her and threatening to kill and ruin her.

5. Ld. Counsel for the Petitioner relies upon the decision of the Hon'ble Supreme Court in 'Arnesh Kumar vs. State of Bihar and another', 2014(8) SCC 273, in which it had been directed that normally a person is not to be arrested in those cases where concerned offences are punishable with imprisonment for a term up-to 07 years with or without fine. Submits further that the maximum punishment for the offences drawn up in the FIR do not exceed punishment for 07 years.

6. This Court is not in agreement with the submission of the Petitioner Counsel. This is so, because firstly the above referred Judgment of the Apex Court was essentially passed in the context of FIR having been drawn up under Section 498-A of the IPC along with the Dowry Prohibition Act, and that it was so observed because relatives of the Complainant's in-laws were felt to be unnecessarily roped in for exerting undue pressure upon the in-laws. Of course, in the concluding part of the Judgment it was also clarified that the directions contained therein would also apply to other cases where the offence is punishable for a term up to 07 years. But it is to be noted that the directions pertained to a situation in which there was a possibility of accused being arrested in misuse of the powers of the Police under Section 41 of the Code of Criminal Procedure and in the very first direction it was laid out that the Police Officers were not to automatically arrest the accused when

a case under Section 498-A of the IPC is registered, but to also satisfy themselves about the necessity for arrest under the parameters laid down in Section 41 of the Cr.P.C.

7. It may be mentioned that Section 41(1)(b)(ii) empowers the Police Officer to arrest an accused so as-

- (a) *to prevent such person from committing any further offence; or*
- (b) *for proper investigation of the offence; or*
- (c) *to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*
- (d) *to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or..."*

8. In the present case, the Petitioner is alleged to have created the fake account of the Complainant on not less than 150 occasions, and to that extent his detention would appear to be called for fulfillment of Section 41(1)(b)(ii)(a) to prevent him further from committing the same offence.

9. As submitted by Ld. Counsel for the State the mobile-phone of the Petitioner and other equipment in which the information pertaining to the offences committed by him under the I.T. Act are lying stored, are yet to be recovered, which are necessary in the interest of proper investigation, and which would otherwise certainly carry the risk of disappearance/deletion or being tampered. Thus, custodial interrogation of the Petitioner would be necessary.

10. It has been further submitted on behalf of the Petitioner that

the Petitioner is Chronically suffering from some neurological disorder. But in the opinion of the Court, this itself is no ground to dispense with custodial interrogation of the Petitioner which appears to be certainly necessary while considering the nature of offences alleged to have been committed by him, and also the number of times such offences, he has done so.

11. No ground is, therefore, made out to grant the extraordinary relief of Anticipatory Bail to the Petitioner.

12. Dismissed.

August 26, 2020
Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No