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

**CRM-M-17112-2020
Date of Decision: 05.08.2020**

Ajay Raghav

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Bipan Ghai, Senior Advocate, assisted by
Mr. Paras Talwar, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Sachin Mittal, Advocate, and
Mr. Akshat Mittal, Advocate,
for the complainant.

SUDIP AHLUWALIA, J. (ORAL)

The instant petition has been filed under Section 438 of the Code of Criminal Procedure, on behalf of the petitioners, seeking anticipatory bail in case FIR No.35 dated 11.06.2020, under Sections 34, 376 and 506 of the IPC, registered at Police Station Women West Gurugram, Gurugram.

2. The allegations against the petitioner in the FIR are to the effect that the complainant, who is a married woman with one child, was induced by

the petitioner, through her parents, who were known to him, to join as an Accountant in his jewellery shop. She accordingly joined on 02.09.2019. However, twelve days later, in the evening, she alleged to have been forcibly raped by the petitioner in his Office on the first floor of the shop. The complainant, after extricating herself did not report anything to her parents as wedding ceremonies of her brother were going on in the household at that time. When she reported on her job on the next day, she was threatened by the staff members of the petitioner that he was in possession of her obscene video which he would use to defame her and would also kill her daughter in case she reported the incident to anyone. In the FIR, the complainant has further stated, *“the lady staff also threatened her”*. According to the complainant, that day onwards she started living in fear, whereas the petitioner and his staff members kept on harassing her and she finally left her job on 08.10.2019 after having been harassed to the limit, and narrated the matter to her parents, who assured her that they would take strict action against the petitioner, “for this shameful act, in which the staff of Ajay Raghav is also involved”.

3. On expected lines, submission on behalf of the petitioner is that he is innocent of the allegations levelled against him and has been motivatedly framed by the complainant on account of the grudge that her father Satish Malik had against him due to the petitioner having, allegedly, committed fraud with him for an amount of Rs.11,13,310/-, which was allegedly delivered by the complainant's father to the petitioner in the course of his lottery/committee business, and which was never returned to him.

4. To support the above contention, Ld. Counsel for the petitioner has drawn attention of this Court to the statement given by the complainant's

father Sh. Satish Malik before the Crime Branch, Sector-40, Gurugram, under Section 161 of the Cr.P.C. on 01.03.2020 in connection with FIR No.198 dated 24.01.2020, under Sections 406, 420 and 120-B of the IPC and Section 3 of the Haryana Protection of Interest of Depositors Financial Act, 2013, registered at Police Station Shivaji Nagar, District Gurugram, in which the petitioner was implicated on the allegation of having duped several persons/investors of their money.

5. The bail petition is nevertheless opposed on behalf of the State, as well as the complainant, who submitted that she and her family members were being pressurized on behalf of the petitioner to compromise the matter with him. To support this contention, copies of the complainant's letter dated 25.06.2020 has been annexed to the Affidavit of the Assistant Commissioner of Police, CAW West, Gurugram, on account of which the Police Authorities initiated action to have the interim bail granted to the petitioner in FIR No.198 dated 24.01.2020 of Police Station Shivaji Nagar, District Gurugram, to be cancelled. But the complainant's letter did not indicate in what manner the pressure was exerted on her or her family.

6. Undoubtedly, there are direct allegations against the petitioner in the present FIR under Section 376 of the IPC. But at the same time, there are certain conspicuous aspects of the matter, which need to be taken with a pinch of salt, and note of which is taken as below:-

(i)The complainant allegedly left her job in the petitioner's shop on 08.10.2019. No satisfactory explanation has been forthcoming regarding the delay exceeding eight months in lodging the FIR;

(ii)The complainant is stated to have been medically examined after

lodging of the FIR. Although, the MLR so far is not available, but it is incomprehensible how culpability of the petitioner, if any, can be determined on the basis of such a medical examination, which was conducted more than eight months after the date of alleged occurrence;

(iii) The allegation that all the staff members of the petitioner, including his lady staff, were in some kind of collusion with him in an attempt to pressurize the complainant to hush up the matter, itself does not inspire much confidence. It is difficult to believe that a man having committed rape forcibly on a woman in the evening would thereafter himself inform about the incident to his own staff members, both male and female, so as to make them dissuade/pressurize the victim from disclosing it to anyone after she reported on her job the next day; and

(iv) In his statement under Section 161 of the Cr.P.C. recorded in connection with FIR No.198 dated 24.01.2020, which was given more than four and a half months after the complainant had left her job, her father stated that he knew the petitioner/accused well. In spite of that, no FIR concerning the occurrence had been lodged either till that time or even for another full three months thereafter when the complainant would appear to have reported the matter to her parents, which has been specifically stated by her in the FIR, although she has not specified the actual date, when she reported it to them.

7. In such circumstances, this Court is not in agreement with the observations of the Ld. Additional Sessions Judge (Fast Track Court), Gurugram, made in Para No.8 of the impugned order (Annexure P-5), wherein it was observed that:-

“ no woman/girl, married or unmarried, would get a false FIR of rape registered as her own honour is at stake. India is still largely conservative when it comes to matters of sex and sexually virginity is prized and a woman who is known to have had premarital sex may find it hard to get married ...”

8. It may be mentioned that the complainant in the present case is admittedly an already married woman and there are any number of instances dealt by the Courts at all levels, in which some time after lodging of the FIR, the complainant/victim lady enters into a compromise, seeking to exonerate the alleged culprit, by contending that the FIR initially had been lodged by her out of “misunderstanding” or some other form of mental pressure. It is unlikely that any number of such instances have not come before the Ld. Court below. But in any case, for taking judicious view of the matter, finer aspects of an FIR must have to be scrutinized in a professional and detached manner without any pre-supposition to the effect that the allegations made in an FIR involving the offence of rape are to be necessarily regarded as a gospel truth without carefully considering the surrounding facts and circumstances, before deciding whether the named culprit must necessarily have to be sent to jail in the interest of investigation.

9. To sum up, therefore, this Court is not inclined to have the petitioner subjected to any custodial interrogation as it is not clear as to what needs to be recovered from him, at this stage.

10. In the circumstances, the petitioner's prayer for Anticipatory Bail is allowed and the petitioner is ordered to be released on bail to the satisfaction of the Arresting Officer till submission of report under Section 173 Cr.P.C.

(Challan). He shall continue to join investigation and shall furnish an undertaking that he shall abide by the conditions specified under Section 438 (2) Cr.P.C. Thereafter, the petitioner will be permitted to furnish bail bonds to the satisfaction of the Ld. Trial Court.

11. However, the complainant would be at liberty to seek cancellation of such anticipatory bail granted to the petitioner at any stage, if she is able to place any cogent material to describe the means and methods by which she is henceforth pressurized or threatened on behalf of the petitioner to compel her to withdraw her case.

12. Disposed off.

05.08.2020

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No