

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

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CRM-M No.18213 of 2020
DATE OF DECISION : 13th JULY, 2020

Varun Joshi

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present: Dr. G.P.S. Randhawa, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.0069 dated 02.06.2020 registered under Section 376 IPC, at Police Station Nihal Singhwala, District Moga.

The case against the petitioner is that by taking advantage of previous acquaintance with the complainant, the petitioner took her to a secluded place and committed rape upon her. Besides this, by threatening with the blackmail, the petitioner extracted money from the complainant. Accordingly, once the money was paid to the petitioner, however, when the petitioner did not desist in his activities and again demanded money, the FIR was got registered by the complainant.

The counsel for the petitioner has submitted that the case against the petitioner is totally concocted. In fact, the case has been

registered at the instance of one DSP against whom the petitioner had got registered an FIR. The said DSP, who stands retired from the service now, has manipulated this case; because he is married in the family of the present complainant.

Coming to the fact of the present case, it is contended by the counsel for the petitioner that the allegations are totally baseless. In fact, being in previous acquaintance with the petitioner, when the complainant was posted in the village of the petitioner, the complainant had developed close contacts with wife of the present petitioner. Hence, the complainant and the petitioner were having very cordial relations. There is no question of any rape. It is further submitted that in any case this could be a case of extra marital affair and not of rape. The counsel has also denied the allegation regarding blackmailing efforts. He has denied being in possession of objectionable material against the complainant. Still further it is submitted that in the statement recorded under Section 164 Cr.P.C. the complainant herself has not fully supported the contents of the FIR. The petitioner is ready to join the investigation as and when required by the police. Hence the petitioner deserves to be granted concession of anticipatory bail.

Notice of motion.

Mr. Randhir Singh Thind, DAG, Punjab, accepts notice on behalf of the State and Mr. Rajesh Bhatheja, Advocate accepts notice on behalf of the complainant.

Learned State counsel has submitted that SIT has been constituted to investigate the present FIR. The investigating agency

would require the presence of the petitioner. Therefore, the petitioner be directed, at least, to join the investigation.

On the other hand, the counsel for the complainant has submitted that the petitioner is President of Block Youth Congress, which is ruling party in the State. Earlier the police was not taking any action on the complaint filed by the complainant. Therefore, she had to file a petition before this court to seek direction to the police to take up the case in the right earnest. It is only thereafter that the police have become active and started investigation in the case. However, even now the police are acting under the influence of the petitioner. It is further pointed out by the counsel for the complainant that the assertion of the complainant qua attempt of blackmailing by the petitioner is clarified even by the material which have been taken into possession by the police, so far. In the petition, earlier filed by the complainant, the police had filed a status report; in which it is stated that the police found 600 pages of photographs, messages and other material concerning the present petitioner and the complainant. It is further submitted that this material is admittedly found with the petitioner. There is more material which the petitioner is having. Hence, the custodial interrogation of the petitioner is necessary. There is sufficient evidence against the petitioner qua the allegation of rape as well as qua payments made to the petitioner on account of the blackmail of the complainant by the present petitioner.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal

procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards *ex facie* innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, this court finds that there are serious allegations against the petitioner. The complainant has levelled the direct allegation of rape against the petitioner. She has also specifically levelled allegation qua the petitioner receiving money from her on account of blackmail. It is not even disputed that from the mobile phone of the present petitioner, 600 pages of communications, messages, photographs, videos and other material have been found, which concern the petitioner and the complainant. In that view of the matter, this court does not find any *ex facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Still further, if the petitioner is granted interim protection at this stage, definitely, this is going to hamper the free and fair investigation by the police, particularly, when there is

allegation that the petitioner has some kind of political affiliation with the ruling party of the State.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

13th JULY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>