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

CRM-M-24390-2020

Date of Decision: 26.08.2020

Ravinder

..... Petitioner

Versus

State of Haryana

..... Respondent

=====
In virtual Court
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CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr.R.S.Mamli, Advocate, for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.0137 dated 20.07.2020 registered under Sections 376(2)(n) & 506 of Indian Penal Code, 1860, at Police Station Bilaspur, District Yamuna Nagar.

The allegation against the petitioner is that the petitioner had been committing rape upon the complainant for the past 3 years. He had even threatened the complainant with dire consequences, if she disclosed the fact of rape to any body. It is further the allegation of the complainant that earlier she was forced to make a statement before the police in favour of the petitioner.

Learned counsel for the petitioner submits that case against the petitioner is totally concocted. The complainant has got lodged this case under the pressure and threat of her husband and her in-laws. It is further

submitted that earlier the husband of the present complainant had made a complaint to the police alleging therein that she was having illicit relation with the petitioner. In that complaint, when the police had called the present complainant, she had made a statement before the police; only on 17.06.2020; that the complaint made by her husband was totally wrong and the petitioner had no illicit relation of any kind with her. It was further stated by the complainant in that statement that her husband and in-laws were pressurizing her either to make a false statement against the present petitioner or they will divorce her. She had also stated that her husband was pressurizing her to make a false complaint against the present petitioner. Therefore, the complainant herself had denied and ruled out any incident of rape with her, in that statement made before the police. Accordingly, it is submitted by the counsel for the petitioner; that under threat of in-laws and her husband, the complainant has lodged the present FIR; by making false allegation against the petitioner qua committing rape upon her for the past 3 years. The petitioner is not involved in any such activity. Hence, the petitioner deserves the concession of anticipatory bail.

Notice of motion.

Mr.Arun Beniwal, DAG, Haryana, accepts notice on behalf of respondent State and Mr.J.S.Chahal, Advocate, appears on behalf of complainant.

The counsel for the State, being instructed by Meena Devi, ASI, submits that there are specific allegations of rape against the petitioner. The complainant has specifically alleged that she had been continuously raped

by the present petitioner and the petitioner had also made a video of the sexual act. That video is required to be recovered by the police. Therefore, custodial interrogation of the petitioner is must. Hence, the petitioner do not deserve the concession of anticipatory bail.

Learned counsel for the complainant has repeated the allegation in the FIR and has submitted that there is a video of the sexual act involving the petitioner and the complainant. That video is in possession of the petitioner. The petitioner can release the same on social media, which can spoil the life of the complainant.

Since in the statement made to the police just one month prior to lodging the present FIR, the complainant herself had denied allegations of petitioner having illicit relations with her, therefore, the counsel was asked by the Court to be doubly sure about his argument qua videography of sexual act and the same being in possession of petitioner. He was warned not to make any wrong statement; just for getting the anticipatory bail declined to the petitioner, which, if found incorrect, can invite adverse consequences for complainant as well. Hence, the counsel for complainant had sought some time to seek instructions from complainant again and to revert back to hearing.

After seeking instructions from the complainant again, learned counsel for the complainant has again submitted that he has been instructed to submit that the petitioner is having a videography of sexual act with the complainant. In the said videography, even the petitioner is seen committing rape upon the complainant. Therefore, there is no question of

the complainant making any false complaint against the petitioner. If the assertion of the complainant qua there being a video of a rape upon complainant by petitioner is found to be false then she would be ready to bear any adverse consequence, including the financial burden to compensate the petitioner for any loss of his reputation.

Counsel for the petitioner has responded to this argument by asserting that there is absolutely no video with him concerning the complaint. It is further stated that when the petitioner is not involved in any manner with the complainant, there is no question of rape and any video of sexual act involving the present petitioner. The story of video is fabricated only to get the anticipatory bail application of the petitioner dismissed. Since the complainant and her husband have crossed the limits of decency and morality in levelling allegations, therefore, they can go to extent of fabricating some obscure video just to get the petitioner fixed. Hence, it is submitted that if the petitioner is not protected against his arrest then the petitioner would suffer loss of his reputation for a false charge.

After hearing counsel for the parties, this Court is put in a piquant situation where the complainant, even at the risk of financial burden, is asserting that the petitioner has made a videography of a sexual act with the complainant, in which even the petitioner is seen having sex with the complainant, whereas, on the other hand, the petitioner has totally denied any such allegation; and has vehemently asserted that since he was never involved in any incident of sexual act with the complainant, therefore, there is no question of any videography being with him or involving him.

Accordingly, on the one hand, it is the interest of investigation of heinous crime of rape and on the other hand, there is a question of reputation and liberty of a citizen who claims himself to be totally innocent and who is asserting that the complainant has lodged the present complaint against him under the pressure of her in-laws and her husband; despite ruling out any such incident in her statement made to the police, as late as, only on 17.06.2020. Therefore, this Court has to balance the rights and interest of both the sides.

Since the prosecution has alleged that there is a videography of sexual act, wherein, even the petitioner is seen, therefore, the prosecution would be required to recover such a videography, if at all the same is in existence. Hence, this Court is not inclined to grant concession of anticipatory bail to the petitioner. Accordingly, the prayer for anticipatory bail to the petitioner is declined.

However, this Court finds substance in the argument of the counsel for the petitioner that even the complainant herself had ruled out any such incident in her statement made to the police on 17.06.2020 only, therefore, his reputation should not be made to suffer for the sadistic pleasure of the complainant or her in-law. Once he is arrested for this heinous crime then his reputation cannot be reclaimed.

Accordingly, it is ordered that if any videography is not recovered from the petitioner during the custodial interrogation or if the police claims to have recovered any such video in which the petitioner is not clearly recognizable, then the petitioner shall be entitled to a

compensation of Rs.5 Lacs from the complainant and her husband; both; jointly. Besides this, the petitioner would also be at liberty to launch prosecution against the complainant for lodging the complaint with false assertions. However, this direction qua compensation is passed only qua veracity of assertion qua videography. This shall not affect the merits of the trial, if any, on the basis of the assertion other than the claim of videography.

In terms of the above, the present petition is disposed of.

26.08.2020
anil

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No