

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

CRM-M No.26874 of 2020

Date of decision : September 09, 2020

Om Parkash Tanwar

..... Petitioner

Versus

State of Haryana

..... Respondent

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Sunil Panwar, 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.60, dated 17.07.2020, under Sections 498-A, 376, 506, 406 and 34 IPC, registered at Women Police Station, Manesar, District Gurugram (Haryana).

The allegations against the petitioner are that the marriage of the complainant was solemnized with the son of the petitioner on 09.03.2019. However, immediately after the marriage, the petitioner and his family had started harassing her for dowry. The husband of the petitioner even avoided having relation with the complainant. After some time, her father-in-law and mother-in-law had taken her to some occult person for practicing some black magic on her. Thereafter, even a person of Muslim religion was called, who chanted some kind of mantras and made the complainant to sprinkle some water around the house. After some time husband of the complainant left for some other place, for not returning.

Thereafter, the complainant came to know that her husband is already married and he is having a girl child from his earlier wife. Hence, the brother of the complainant went to ascertain the facts regarding the earlier marriage of the husband of the complainant. After returning from that place, he confirmed the said fact. When father-in-law of the complainant came to know about these facts, and realising that his entire act has been exposed, then he started keeping bad eyes on the complainant. On 09.07.2020, the petitioner i.e. father-in-law of the complainant entered in her room and made some obnoxious and obscene observations. Thereafter, the present petitioner committed rape upon the complainant. Next day, the complainant even brought this fact to the notice of Sarpanch of the village. The Sarpanch of the village advised her to bring this fact to the knowledge of the village community. However, fearing dishonour, she did not disclose these things to anybody outside. Instead, the complainant made a call to her brother. Accordingly, she was brought back to the house of her parents and she was medically examined. With these allegations, alleging harassment on account of dowry, as well as, offence of committing rape, against the present petitioner, the FIR was got registered by the complainant.

While arguing the case, learned counsel for the petitioner has submitted that the allegations levelled against the petitioner are vague. The petitioner is not even aware of the fact as to whether his son has solemnized any earlier marriage or having child from that marriage. In fact, getting frustrated from the matrimonial aspect, the complainant left the house of her in-laws. The medical of the complainant was conducted after about a week of the alleged incident. Therefore, the medical report does not carry any

significance as evidence of commission of crime. It is further submitted by the counsel that there is an audio recording of the conversation, in which the father of the complainant is heard saying that he can involve the petitioner in a false case under Section 376 IPC. Further, it is submitted that the complainant and her family had taken away all the dowry articles and even had issued the receipt for the same. However, at that time, no such allegation of rape was ever raised by the family of the complainant. It is only subsequently, as an afterthought, that the present FIR has been got registered.

Notice of motion.

Mr. Arun Beniwal, DAG, Haryana, accepts notice on behalf of the respondent-State. Mr. Ramesh Puri, Advocate has appeared on behalf of the complainant.

Learned State counsel, on instructions from ASI Suman, has submitted that there are specific allegations against the petitioner. The medical examination of the complainant has specially pointed that committing of rape upon her could not be ruled out. It is also submitted that once the husband of the complainant was already away; and if there is possibility of rape shown by medical report, in that situation, the allegations of the complainant cannot be brushed aside lightly. Further, it is submitted that the swab samples have already been taken to match the semen detected on prosecutrix. For completing the process of recoveries and of taking samples from the petitioner, and for other aspects of the case, custodial interrogation of the petitioner is required. Hence, the petitioner does not deserve the concession of anticipatory bail.

Learned counsel for the complainant has also submitted that despite being father-in-law of the complainant, the present petitioner has committed a heinous crime of committing rape upon her. The petitioner was fully aware of the fact that his son is already having child from another wife. Despite that; as a part of the conspiracy, he got the complainant married to his son. Finding an opportunity in the absence of the husband of the complainant, the petitioner took advantage of loneliness of the complainant; and he misused his fatherly relation as well. It is also submitted by the learned counsel for the complainant that the complainant has been medically examined and the report has pointed out that the offence of rape has been committed upon her. Hence, the petitioner is directly involved in all the offences as alleged against him.

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 facts of the present case, this Court finds that there are direct allegations against the petitioner, who is none other than her father-in-law, that he committed rape upon the complainant. It is not disputed that she was at the house of the petitioner on the date of incident. The medical examination of the complainant has also been conducted, which tends to substantiate the allegations of the prosecutrix qua her allegations of rape. Hence, this court does not find any ex-facie innocence on the part of the petitioner, vis-à-vis the allegations levelled against him. Hence, this Court is not inclined to exercise its powers under Section 438 Cr.P.C. so as to protect the petitioner against his arrest. Still further, this Court finds merit in the argument of learned counsel for the State that to unearth the dimensions of the crime committed by the petitioner and to gather the evidence against him, custodial interrogation of the petitioner is required. Hence, protecting the petitioner against his arrest, at this stage, would hamper the free and fair investigation on the part of the police.

In view of the above, this Court does not find any merits in the present petition. Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

September 09, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No