

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

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CRM-M No.31667 of 2020

DATE OF DECISION : 8th OCTOBER, 2020

Harsimran Jeet Singh

.... 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 : Mr. Sarju Puri, 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 bail in case FIR No.98 dated 28.08.2020 registered under Sections 354-D & 506 IPC (Section 384 IPC added later on) and Section 66(E) of Information Technology Act, 2000 at Police Station Kathgarh, District SBS Nagar.

The allegations against the petitioner, in brief, are that the petitioner and the complainant had developed love affair. However, the said love affaire has gone sore. In the interregnum the petitioner had made obscene videos and photographs of the complainant and has now given the same to her in a pen drive and started threatening the complainant by saying that if he is not paid money then the same would be put on social media. In the process, the complainant paid money to the petitioner several times. One gold chain was also given to him. Not

only this, the petitioner demanded an amount of ₹1,00,000/-. The complainant had withdrawn that amount from her bank account and had given the same to the petitioner. For these demands of money and threats of blackmail, the petitioner used to even send SMS and other messages to the complainant. After breakup of the relationship with the petitioner, when the complainant got engaged to another person, then the petitioner even threatened that person and asked him not to accept the complainant. Then the matter was disclosed by the complainant to the family. With these allegations, the present FIR was got registered by the complainant.

It is submitted by the counsel for the petitioner that the case against the petitioner is totally concocted. The relations between the petitioner and the complainant were consensual in nature. Everybody in the village was aware of this fact. Still further it is submitted that, in the first instance, only the bailable offences were alleged against the petitioner. However, after three weeks the police have added Section 384 IPC as well, to make the case involve non-bailable offence. Regarding Section 384 IPC, it is further submitted that during the inquiry conducted by the DSP, no evidence was found by him qua this offence. Therefore, in the first instance, Section 384 IPC was not involved in the case. It is only on the basis of the manipulated supplementary statement of the complainant that Section 384 IPC has also been added in the FIR. Still further it is submitted that the petitioner has already deleted the entire objectionable material. Still further, it is submitted that the SMS sent by the petitioner nowhere contain any element of threat or blackmail. Qua the amount of ₹1,00,000/-, allegedly paid by the complainant to the petitioner, it is submitted that mere withdrawal of the amount from the

bank by the complainant, does not mean that the same amount has been transferred to the petitioner. The petitioner shall join the investigation as and when required by the police. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Pawan Sharda, Sr. DAG, Punjab, accepts notice on behalf of the State.

Learned State Counsel, on instructions from ASI Pawan Kumar, has submitted that there are specific allegations against the petitioner. The complainant has provided to the police the copy of the material mentioned by her in the complaint, including the copies of the obscene videos and the concerned SMS. Still further, it is submitted that there is a direct statement of the complainant qua having repeatedly paid the amount to the petitioner and that statement is corroborated by the withdrawal of the amount of money by the complainant from her Bank account. Taking the arguments further, learned counsel for the State has submitted that even if the relations between the complainant and the petitioner are taken to be consensual, as is argued by the counsel for the petitioner, then also the petitioner had no reason or occasion to make the obscene videos and to threaten the complainant to put the same on social media. The State counsel has also submitted that the police are yet to recover the original obscene videos and the equipment used for recording of the same; which are in the possession of the petitioner, besides other material relating to the demand and receipt of extorted money. Therefore, the custodial interrogation of the petitioner is imperative. Hence the petitioner does not deserve any concession of bail.

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 specific allegations against the petitioner qua having prepared obscene videos of the complainant and qua the threat to put the same on social media. The complainant has made a specific statement that after the relation had gone sore, the petitioner has started blackmailing her with threat to make the material public. In the process the petitioner received a gold chain from the complainant; besides getting repeated payments from her. She has specifically mentioned the withdrawal of an amount of ₹1,00,000/- from her bank account to give it to the petitioner.

As per the submissions made by counsel for the State, the statement of the complainant is corroborated from the record of withdrawal. Still further the petitioner has not been able even to deny the existence of the obscene videos of the complainant. Hence, this court does not find any *ex-facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Besides this, this court finds substance in the argument of learned counsel for the State that the relevant material, including the original obscene videos, record of SMS, evidence regarding receipt of money and other relevant materials are to be recovered by the police, hence, the custodial interrogation of the petitioner is imperative in this case. Therefore, this court does not find this to be a fit case to exercise its power under Section 438 Cr.P.C so as to protect the petitioner against his arrest.

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

8th OCTOBER, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No