

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

CRM-M-33209-2020

Date of decision:-16.10.2020

Mukesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.K. Choudhary, Advocate
for the petitioner.

Mr.H.S. Sullar, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Mukesh Kumar, aged 42 years, an accused in FIR No.143 dated 24.8.2020 for the offences under Sections 376, 420, 120-B IPC and Sections 3(1)(i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), registered with Police Station Division No.1, Pathankot.

Briefly stated, the facts of the case are that criminal machinery was set into motion by prosecutrix (name not being mentioned to conceal her identity and referred to as '*the complainant/the victim*'), who in the statement made to the police stated that she was serving as nurse in a private hospital at Kolkata and was married with one Sanjay Kumar; subsequently she developed friendship with Mukesh Rana Jaat,

serving in Indian Army, on Facebook, who called her to Pathankot and took her to various other cities and had sex with her on several occasions by giving her allurements of having marriage with her; subsequently Mukesh Rana snapped all links with her. On the basis of such complaint, formal FIR was registered.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Additional Sessions Judge, Pathankot vide order dated 8.10.2020. As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition is given to respondent – State. Mr.H.S. Sullar, DAG, Punjab has put in appearance on behalf of respondent – State and accepts notice on behalf of respondent – State.

I have heard learned counsel for the parties besides going through the records.

At the very outset, it may be stated that the present petition is not maintainable on account of bar of Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which provides that provisions under Section 438 Cr.P.C. relating to case involving arrest of a person on an accusation of having committed an offence under the Act shall not be applicable.

Even otherwise, on merits also the petitioner does not have any case. The allegations against the petitioner are very grave and serious.

With regard to the plea raised by learned counsel for the petitioner that petitioner is innocent and on a complaint having been filed

JMIC, Nadbai (Bharatpur), Rajasthan has directed the police to register a case under various provisions of IPC and under Section 67A of Information Technology Act, 2008 against the present complainant, for that reason she had lodged the instant FIR, the same is not much helpful to the person in getting pre-arrest bail, which is a discretionary relief to be granted in exceptional circumstances. If present complainant has committed any offence, she would face the consequences thereof but at this stage while dealing with a request of the petitioner for grant of pre-arrest bail, mainly the version of the prosecution is to be scanned. Determination of guilt of accused is to be done by the trial Court on completion of trial and this Court while deciding petition for anticipatory bail is not to conduct a deep probe into merits of the case considering the probable defence of the petitioner/accused.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands

dismissed.

16.10.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No