

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-37147 of 2020

Date of decision:25.11.2020

Dharam Singh @ Mohan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Keshav Partap Singh, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
for the respondent-State.

Mr. Salim Ahmad, Advocate
for the complainant.

SUVIR SEHGAL J.

The hearing of the petition has been taken up through video conferencing on account of the outbreak of coronavirus (Covid-19) pandemic.

Present petition has been filed by the petitioner under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case bearing FIR No.459 dated 22.09.2020 registered under Sections 376, 342, 323, 506, 120-B of Indian Penal Code, 1860 and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of Information Technology Act, 2008 at Police Station Nuh, District Nuh.

The above FIR was lodged on the basis of a complaint given by A (hereinafter referred to as victim-complainant) and the same, as given, in the petition is reproduced as under:-

“To SHO,

P.S.Sadar Nuh,

Subject: Regarding application to take legal action against (1.) Dharam Singh alias Mohan son of Jita Ram) (2.) Sh.Jeet Ram) (3.)Sh. Kanhiya) (4.) Murti Devi wife of Jeet Ram).

Sir,

It is requested that I, A (name withheld) d/o Sh.B (name withheld) caste Harijan, am resident of Salahawas, District Jhajjar, Haryana, presently residing at Police Line, Nuh and I am posted at Police Station Nuh as Lady Constable in Haryana Police. The applicant knew accused Mohan for last many years, who told the applicant that he is bachelor and is willing to marry her. To which the applicant asked about some time for the accused and after applicant got the job, Mohan asked my father for marriage. In 2018, Mohan and his uncle (chacha) Kanhiya and his mother came to my house and finalized my marriage with him. After that, accused Mohan started visiting my house and my official house. After that accused Mohan and his family in connivance with each other grabbed away from me and my parents Rs.6-7 lakhs showing their personal necessity and apart from that, he even demanded money from me on various occasions. Whenever my father used to ask them about marriage then the accused and his parents gave excuses and used to say that we will first solemnize the marriage of our younger son and then we will see. The accused Mohan works in Army and whenever, he used to come for holidays, he used to spend time with me. When accused Mohan came for holidays in January 2019-2020. He lived with me. During that time, one

lady namely Kavita called my father on his mobile phone and told that she is wife of Dharam Singh alias Mohan and told that we have also two sons and is living in the house of Mohan. In this pretext, I asked Mohan about that lady and kids, then accused Mohan asked me not to talk about that and kept on betraying me and due to this reason, he used to beat me, abused me and used caste related words and exclaimed me that I am chamari and I have made relations with you for time pass and you are just a keep for me and nothing else. After accused Mohan left for his duty, then I discussed about this with my parents and then my father enquired about Mohan and it was found that he being married and is having two sons. My father had conversation with accused Nos.2, 3 and 4 to end the relationship and also to return back the money, but accused's father Jeet Ram, refused it and asked about which money, we have not taken any money from you and then ill-treated my father. After that accused Mohan kept on calling me and used abusive words and mentally tortured me. That accused Mohan came for holidays in September and on 07.09.2020, he insisted to meet him and even after refusing, he came to Nuh. In order to escape him, I went to Nalhar Temple so that he could return back. I returned to my quarter. At about 3-4 a.m, I woke up after hearing some sound and found that accused Mohan managed to enter in my quarter and grabbed me and did wrong act with me. After my refusal, he gave beatings to me and snatched my phone and kept it with him. Then he told me

that 'sali chamari'. I have recorded your obscene video. If you will try to leave me or try to end this relationship or demand money from me or my parents, then I will upload this video on internet and you will be defamed in your department. You will not be able to face anybody and if you try to marry someone, I will kill you. I will defame you in front of the society. Due to this reason, I remained mum. I have called accused Mohan's father and told him that Mohan has recorded a video of me and is threatening me to upload the video on the internet. Then accused No.2 told that let him record, he has not uploaded yet. When he will upload then tell me. That on 09.09.2020, when I was cleaning my house, I found a micro camera inside the bouquet, which was kept on my bed. When I enquired about the same, he snatched the camera and broke it. That on various occasions, he has threatened me by showing my photos to upload on the internet. That I have not disclosed to anybody due to fear of reputation. On 15.09.2020, I had taken leave and went to my house then accused Mohan called me and asked me to meet him for the last time and also told me that he will delete my photos and videos and accused told me to meet me on 20.09.2020 at Mahendargarh and told me that we must sit somewhere and talk. In order to talk, he took me to Hotel (Lajij) and I told him that I want to go, but he did not let me leave and I was held captive for the whole night and he forcefully committed rape upon me without my consent. When I told him that I will file a complaint then he told me that go and

file complaint, I am in Indian Army, where various cases are registered under Section 302 against soldiers, still nobody could deprave them, you do whatever you want to do and I remained silent due to my reputation and he went from there after locking me inside the room and told me that he will be coming back and do not go anywhere. Then I told somebody to open the door and somehow I managed to escape from there and came to Police Line, Nuh. Who now as well calling me and threatening me to kill. It is requested to you that strict legal action be taken against accused persons and my life, property and reputation be protected. I will be very thankful.

Thanking you,

Applicant

*A (name withheld) d/o B (name withheld),
Caste Harijan, Resident of Salhawas,
District Jhajjar,
Presently residing at Police Line,
Nuh.
Mobile No. _____”*

Counsel for the petitioner has argued that the complainant is a 24 years old girl and working as a Constable with the Haryana Police. She has lodged the FIR in the Police Station where she is posted in collusion with other police officials. Counsel argues that perusal of the FIR shows that the relationship between the complainant and the accused-petitioner was consensual and no assurance was given by the petitioner, at any stage, of getting married to the complainant. He has relied upon the photographs (selfies), Annexure P-1, taken by the complainant which show the complainant and the petitioner in a bedroom. He has also placed reliance upon the audio conversation recorded and placed on the record in compact

discs (CD), Annexures P-2 and P-3 to urge that the complainant had broken the relationship with the petitioner and thereafter, lodged the complaint against the petitioner. He submits that the petitioner is ready to join the investigation and co-operate with the investigating agency.

Per contra, counsel for the State, assisted by the counsel for the complainant, have argued that the petitioner had physical relations with the complainant on the false pretext of marriage. He submits that it was only when the wife of the petitioner called up the father of the complainant that she came to know about the fact that the petitioner is married. It has been further argued that out of the amount of Rs.6-7 lakhs mentioned in the FIR, some money was returned by the petitioner and deposited in the bank account of the complainant. It has been further submitted that obscene videos were recovered from the mobile phone of the petitioner. As per instructions received by him from SI Shankutraj, the complainant has supported the allegations in the statement recorded by her under Section 164 Cr.P.C. Still further, he points out that the petitioner has criminal antecedents and an FIR bearing No.220 was registered against him under Section 354-B, 379-B and the Arms Act, which he has not mentioned in the petition.

I have considered the rival submissions of the parties.

There are categoric and serious allegations against the petitioner regarding rape, wrongful confinement of the complainant, criminal intimidation, causing hurt, etc. The complainant has not only given the details of the alleged incidents in the complaint but has even supported them in her statement recorded under Section 164 Cr.P.C. Objectionable material containing nude videos were found stored in the mobile phone

recovered from the accused petitioner. Even the micro camera used for recording the videos has been recovered. The complainant has specifically mentioned that the relatives of the petitioner had accompanied him in June 2018 when the marriage between the two was finalized and thereafter, the petitioner kept on delaying the matter on one pretext or the other.

The complainant belongs to a marginalized group of the society. In her complaint, she has specifically given the details of the language and the defamatory words used by the petitioner which attract the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. There is no dispute that the complaint has been lodged with the jurisdictional police station. Therefore, the argument of the counsel for the petitioner that the FIR has been registered at the police station where the complainant is posted, cuts no ice. The photographs relied upon by the petitioner is also of no help to him, rather they go to show that the petitioner was in constant contact with the complainant and there was physical intimacy between them. The veracity of the audio conversation in compact discs will be gone into by the trial Court at an appropriate stage.

The statement of the complainant and the specific allegations levelled by her cannot be brushed aside. The observations of the **Supreme Court in Vijay alias Chinees Vs. State of Madhya Pradesh (2010) 8 SCC 191** (para 11) deserve to be noticed:-

“11. In State of Punjab Vs. Gurmeet Singh (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation etc., the Court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix

should not be a ground for throwing out, an otherwise reliable prosecution case. Evidence of the victim in sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof.....”

Still further, as pointed by the counsel for the State, the petitioner has criminal antecedents. He is involved in another FIR registered against him pertaining to crime against women. However, the petitioner has not disclosed this fact in the petition, rather in para 20 of the petition, he has made a categorical declaration, which is reproduced as under:-

“20. That as per the instructions of the petitioner, no other case is registered or pending against the petitioner in any Court.”

The discretionary relief of anticipatory bail is not meant for a person who suppresses facts about his criminal past and approaches the Court with tainted hands.

Keeping in view the above background and the gravity of the offence, this Court is of the view that no case is made out for grant of anticipatory bail to the petitioner. The petition is, accordingly, dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

November 25, 2020
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes