

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 15011 of 2021 (O&M)

Date of decision : 25.5.2021

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Avishake Goyal

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Promila Nain, Advocate for the petitioner

Mr. J.S. Ghuman, Deputy Advocate Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-14852-2021

This is an application for pre-ponment of hearing in the
main petition which is fixed for 18.8.2021.

Heard.

The application stands accepted. The main petition is
pre-poned and taken up today.

Main case.

This petition for pre-arrest bail under Section 438 Cr.P.C.,
has been filed by petitioner – Avishake Goyal, aged about 32 years,
s/o Sushil Kumar Goyal, resident of House No. 3804/2, Jeeraj Street,

Shahi Samadha, Patiala, being accused in case FIR No. 315 dated 16.12.2020 for offences under Sections 450, 376, 511, 323, 506 IPC (later on offences Under Section 450 and 376 IPC not made out during investigation and offence under Section 354, 354-A, 354-C, 354-D IPC were added), registered at Police Station Kotwali Patiala, District Patiala.

The criminal machinery in this case was set into motion by the prosecutrix (name withheld to conceal her identity), a resident of Mohalla Ji Raj, near Ragho Majra, Tehsil and District Patiala, aged about 22 years, who in the written statement submitted by her to the police, stated that the present petitioner -accused – Avishake Goyal has been residing in her neighbourhood and he had been visiting their home being a close friend of her brother Vishal Goyal. In that way her family had trust in him; that about 1-1/2 years prior to submission of complaint by the prosecutrix to the police, the petitioner accused had intercepted the prosecutrix near old Sabji Mandi and asked her whether she had any relationship with any boy to which the prosecutrix replied in negative and then petitioner started keeping a bad eye on her and whenever the prosecutrix used to go out of house, the petitioner -accused would tease her. One day, while the petitioner was alone in her house, then the petitioner accused went there and threatened the prosecutrix that he would tell wrong things about her to her family. The prosecutrix got scared. Petitioner accused tied his handkerchief on eyes of the prosecutrix, lifted her shirt up and put down her pyajama and made video of her body, kissing her on lips

on her body and face. Thereafter, when the prosecutrix resisted, he left that place. According to the prosecutrix, the petitioner -accused repeated such acts 2-3 times in her house, when her family members were away. When the prosecutrix protested, the petitioner -accused threatened to inform her family members and to make her video viral on social media. The petitioner accused used to make phone calls to the prosecutrix compelling her to make physical relations and he would threaten and intimidate her; that on 6.12.2020, Avishake sent two audio clips on the mobile phone of the prosecutrix; that the prosecutrix put his mobile phone on black list; that at about 3 P.M. When the prosecutrix was lone in her house, the petitioner -accused forcibly entered into her house and stated to the prosecutrix that he cannot live without her and forcibly caught hold of her and tried to make physical relations with the prosecutrix and when she resisted and then he slapped her prosecutrix started crying and raised alarm and then the petitioner-accused left the place by giving threats of life to the prosecutrix. Ultimately, the prosecutrix informed her family members and then the police was informed by submitting of a written complaint on the basis of which formal FIR was registered.

Apprehending his arrest in this case, petitioner -Avishake Goyal, had approached the Court of Sessions at Patiala, by filing an application for grant of pre-arrest bail. Rather he had filed two applications. Both of those applications were dismissed. The second one was dismissed by Additional Sessions Judge (Exclusive Court for heinous crimes against women), Patiala, was dismissed vide order

dated 4.3.2021. Therefore he has knocked at the door of this Court, craving for grant of similar relief, which request is being opposed by learned State counsel,

I have heard, learned counsel for the petitioner, learned State counsel, besides going through the record.

The allegations against the petitioner are very grave and serious, which do not warrant concession of grant of pre-arrest bail to the petitioner. The pre-arrest bail is a discretionary equitable relief, which is not to be granted in routine, but in exceptional circumstances. This relief is to be granted to the persons who may be involved in false criminal cases on account of political reasons or on account of misuse of power by influential persons, to save them from harassment and any inconvenience and it is not to act as a shield for the criminals to provide protective cover to them from arrest and interrogation by the police.

The custodial interrogation of the petitioner is required for complete and effective investigation of the case. In case the custodial interrogation of the petitioner is denied to the investigating agency, that would leave many lacuna, loopholes and gaps in the investigation, adversely affecting the same, which is not called for.

Learned counsel for the petitioner has submitted that the FIR was initially for offence under Sections 450, 376, 511, 323, 506 IPC, but now the offence under Sections 376 and 450 IPC have been deleted and offence under Section 354, 354-A, 354-C and 354-D IPC, have been added.

May it be so, even then the allegations against the petitioner-accused remain to be grave and serious.

Another argument advanced by learned counsel for the petitioner is that the prosecutrix had good relations with family of the petitioner and she had even attended his married, thereafter having friendship with wife of the petitioner, she has referred to various photographs placed on record in that regard, contending that as a matter of fact, Ankit, a cousin brother of complainant – prosecutrix, staying in their house had sent vulgar messages to the wife of the petitioner and on a complaint made by parents of the petitioner, parents of the prosecutrix had apologized and for that reason the present FIR has been lodged. She had further contended that a matrimonial dispute is between Ankit and his wife and family of the complainant – prosecutrix feels that the petitioner and his wife are in touch with wife of Ankit namely, Kanchan and for that reason the present FIR has been lodged. She has referred to the FIR said to have been got recorded by Kanchan against Ankit and others for offence under Section 498 IPC as Annexure P-4.

Whereas, learned State counsel, has vehemently contested such contentions stating that no young un-married girl would invite stigma to her moral character by levelling false allegations, fully aware of the fact that those may affect her marital prospects and further FIR lodged by Kanchan w/o Ankit has nothing to do with the present case.

After hearing such contentions, I find that the reason put

forward by counsel for the petitioner for alleged false implication of the petitioner in this case is least convincing, whereas the reasoning given by learned State counsel is quite plausible and satisfactory.

Under the circumstances, I find that the petition is doomed for failure and is dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

25.5.2021
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(**H.S. Madaan**)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No