

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

-.-

CRM M 20204 of 2021

Date of decision: 20.05.2021

Abhinesh Kashyap

...Petitioner

Versus

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-.-

In virtual Court

Present: Mr. JPS Chadha, Advocate
for the petitioner

-.-

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No.0033 dated 03.04.2021 registered under Sections 376(2)(n), 313 and 506 of Indian Penal Code at Woman Police Station, Ambala City.

The complainant leveled allegations against the petitioner that she had taken a loan from Bajaj Finance Limited, Ambala City, for which, she was required to pay installments. She could not pay the same. The petitioner is working as Area Collection Manager with the said Finance Company. On the ground of extending help in the settling the loan, the petitioner developed intimacy with the complainant. In the process, both of them got close. The petitioner started physical relations with the complainant. Although, the petitioner was already a married man, he has

disclosed to the complainant that he had already divorced his wife and that he would marry the complainant. The petitioner also arranged a residential accommodation for the complainant at Zirakpur and both of them started residing together. In June, 2020, she came to her parental house. On 06.06.2020, at about 12:30 p.m., the petitioner came to her parental house and again told the complainant that he wanted to marry the complainant. By extending this promise, he again established physical relations with her. On 13.01.2021, the petitioner also took the complainant to Goa and then back to Delhi and repeatedly made promise to marry her and made physical relation with the complainant. Out of the physical relations, the complainant got pregnant twice. As regards first pregnancy, the complainant had to abort due to non-development of foetus whereas, the second pregnancy, she got aborted under the duress of the petitioner on 12.02.2021 at Maatram Health Care Centre, Dera Bassi. On these allegations, the first information report was got registered against the petitioner.

While raising arguments, counsel for the petitioner has submitted that case against the petitioner is totally concocted. The complainant, herself, is a lady of doubtful antecedent. Since she was not able to repay the loan amount. She had presented to the petitioner that she was in a personal problem. Out of humanity, the petitioner extended help to her. In the process, some money was paid by the petitioner to the complainant. When the petitioner demanded his money back, the complainant has created this false story just to rope in the petitioner in the criminal case. It is further submitted that the complainant is a married lady and is of 37 years of age. Therefore, even if there have been physical

relations between the petitioner and the complainant, no criminal liability can be fastened upon the petitioner; being consensual acts. Counsel has further submitted that the allegations leveled by the complainant are inherently inconsistent and improbable. On the one hand, the complainant has stated that the petitioner made physical relations by promising her to marry and on the other hand, she has asserted that the petitioner forcibly made the physical relations with the complainant. Relying upon the whatsapp chat between the complainant and hospital staff, counsel for the petitioner has submitted that the complainant had got the child aborted on her own because she did not want any child at that time. Therefore, the petitioner has no role in the abortion of the child of the complainant as well. Counsel has further submitted that there is no other case against the petitioner. The petitioner shall join the investigation. Hence, the petitioner be granted concession of anticipatory bail.

Notice of motion.

Mr. Rajesh Gaur, Additional Advocate General, Haryana accepts notice on behalf of the State and Ms. Priya Sharma, Advocate has put in appearance on behalf of the complainant.

Counsel for the State, on instructions from ASI Suman submitted that there are positive allegations raised by the complainant against the petitioner. Not only this, even in the statement made before the Judicial Magistrate, the complainant has specifically named the petitioner as having made physical relations on the promise to marry, as well as, forcibly. Counsel further submitted that document (Annexure P4) categorically shows that the petitioner and the complainant both were residing together in

the same rented premises as is recorded in the rent agreement itself. It is further submitted that the whatsapp chat, as pointed out by counsel for the petitioner is yet to be assessed and communication between the petitioner and the complainant through social media platforms are also to be investigated. Therefore, the custodial interrogation of the petitioner is imperative. Moreover, the offence in the present case is very serious. Hence, the petitioner does not deserve any concession of anticipatory bail.

Counsel for the complainant has submitted that the petitioner had made physical relations; repeatedly; on the promise to marry her. At times when she resisted the physical relations, the petitioner even resorted to force and black mail. Therefore, the complainant was kept in continuous physical relationship. The petitioner and the complainant resided together; since the petitioner had been making promise to ultimately marry her. However, when she asked the petitioner to marry her, the petitioner started threatening the complainant.

No doubt, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C.; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under section 438 Cr.P.C. However, this power is so extra ordinary that it is not even available in some part of the country qua all the offences

and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, this Court finds that there are specific allegations against the petitioner qua making physical relations with the complainant by promising to marry her. These allegations have been again asserted by the complainant in a statement made before the Judicial Magistrate. Still further, the documentary evidence placed on record shows that the petitioner and the complainant were residing together in a rented accommodation. The very fact that the petitioner, despite being a married man resided with the complainant, lends prima facie credence to the allegations leveled by the complainant. Moreover, it is the case of the petitioner himself that he has extended financial help to the complainant. Unless there was some intimate relationship between the duo, the petitioner was not expected to lend any financial help to the complainant, when she was already in default of repayment of loan to the Company where the petitioner was working as Branch Manager. Even the allegation of visit to Goa by the petitioner has not been denied as such, although, his assertion is that it was a group tour. The fact as to what happened during the said tour would be a question of evidence, which can be deciphered during trial.

However, this again lends prime facie credence to the assertion of the

complainant that the petitioner had taken her to Goa and made physical relations with her on the promise to marry her.

In view of the above, this Court does not find any ex-facie innocence on the part of the petitioner so as to exculpate him of the crime, as alleged against him. Moreover, this Court finds force in the argument raised by counsel for the State that the custodial interrogation of the petitioner is required for collection of evidence relating to various aspects of the matter; since that evidence is exclusively in possession or in the knowledge of the petitioner. Hence, this Court does not find any ground to grant concession of anticipatory bail to the petitioner. Moreover, granting such concession would impair the free and fair investigation of the crime.

Resultantly, finding no merits in the petition, the same is dismissed.

(Rajbir Sehrawat)
Judge

20.05.2021
Mohan Bimbura

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