

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.34856 of 2021 (O&M)

Date of Decision.24.09.2021

(Heard through VC)

Shyam Sunder

...Petitioner

Vs

State of Haryana

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. APS Deol, Senior Advocate with
Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

Mr. Keshav Pratap Singh, Advocate
for the complainant.

-. -

JAISHREE THAKUR J. (ORAL)

CRM No.31600 of 2021

Application is allowed.

Annexures P-16 to P-19 are taken on record.

CRM-M No.34856 of 2021

1. Reply filed on behalf of the respondent-State is taken on record.
2. The instant petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.88 dated 12.08.2021 under Sections 354, 354-D, 506, 34 IPC registered at Police Station Women West Gurugram.
3. In brief, the facts are that the FIR came to be registered at the behest of the complainant on submitting that she came in contact with Shyam Sunder, Secretary, Red Cross Society, Gurugram i.e. the petitioner herein, who offered her the post of Counsellor as it was lying vacant. She was appointed and thereafter, the said petitioner sent her obscene messages on Whatsapp but later

on used the feature of '*delete for everyone*', however, screenshot of the obscene messages sent by the petitioner was saved. It was alleged that the complainant had typhoid due to which she could not attend office. She was called into office on 28.04.2021 on the pretext that a video for plasma donation has to be made and when she entered the room, petitioner touched her in an inappropriate way. She came out and made a call to the Chairperson of Unnati Charitable Trust and informed her about the incident. On the next day, Shyam Sunder called her and told her that he had access to high officials, who respect his words and informed her that he has a flat in Vatika Badshahpur where she would be kept and the petitioner would keep visiting her. The FIR also alleged harassment caused by the petitioner and non-payment of salary to the complainant.

4. On the basis of the complainant, an FIR was registered and the anticipatory bail sought by the petitioner herein came to be dismissed.

5. Mr. Deol, learned senior counsel assisted by Mr. Sushil Bhardwaj, Advocate appearing for the petitioner submits that the complainant is a lady of dubious character as she had solemnized marriage twice and had received money in a settlement thereof. It is argued that the FIR has been registered on a false premise that the petitioner herein was harassing her whereas in fact, the complainant herein had misappropriated sewing machines meant for distribution to women in destitute. When she was asked to return the same, the instant FIR had been got registered.

6. It is further argued that in case Whatsapp messages relied upon by the complainant are taken to be true, no offence under Section 354D IPC would be made out and in fact, it would show that the alleged messaging between the petitioner the complainant is consensual in nature.

7. Learned counsel appearing on behalf of the respondent-State and the complainant oppose grant of anticipatory bail to the petitioner by contending that apart from abovesaid, there is an incident complained of by the complainant dated 28.04.2021, on which date, the petitioner called the complainant to the office and behaved inappropriately with her. It is argued that the petitioner had filed an affidavit that he was not present in the office on the said date, being COVID-19 positive.

8. Reply filed on behalf of the respondent-State would reflect that the averment made on the affidavit is absolutely false as attendant sheet reflects his presence in office on the said date. It is also argued that the allegations as set out that the complainant had refused to return the sewing machines is patently false, as it is a defence being created by the petitioner herein. It is argued that the Whatsapp messages available with the complainant and supplied to the investigating officer would reflect that the messages are obscene as the petitioner herein asked the complainant to send her nude photographs. Most of the messages that have been sent are late at night and therefore, the petitioner herein who was a boss and in a dominant position had misused his office.

9. I have heard learned counsel for the parties and have perused the replies that have been filed. The petitioner at the very outset while praying for grant of anticipatory bail on 26.08.2021 had made a categorical statement that he was not present on the date of occurrence i.e. 28.04.2021 when it was alleged that he had called the complainant in office and touched her inappropriately. As per the reply filed by the State, the petitioner was found to be present in office on the date of occurrence and therefore, this Court is of the opinion that he made a false averment in the Court, which is also reflected in the pleadings and the same are supported by an affidavit. There are screenshots available between the petitioner and the complainant, which are obscene. The contention raised

that the complainant was active participant in the Whatsapp conversation and therefore, cannot be permitted to turn around and level allegation against the petitioner, would not be sustainable as the petitioner is in a dominant position and the complainant was on contractual job. The plea set up that the complainant was a lady, who had been married twice and had obtained money from her husband while getting divorce, is without any merit. The investigation is at initial stage and therefore, custodial interrogation of the petitioner would be required.

10. As an upshot of my finding, no ground is made out to grant relief of anticipatory bail to the petitioner and consequently, the instant petition stand dismissed.

(JAISHREE THAKUR)
JUDGE

September 24, 2021
Pankaj*

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