

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

* * *

CRM-M-44273 of 2020
Date of Decision: 05.01.2021

Gagandeep Sharma

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Inderjit Sharma, Advocate for the petitioner.
Ms. Samina Dhir, DAG, Punjab.
Mr. Ritesh Pandey, Advocate for the complainant.

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Avneesh Jhingan, J. (Oral)

The matter is taken up for hearing through video conference due to COVID-19 situation.

This is a petition seeking anticipatory bail in FIR No. 198 dated 9.12.2020 under Section 354 and 354-A IPC and Section 66 of the Information and Technology Act, 2000, registered at Police Station Sadar, Gurdaspur.

The FIR is at the instance of the prosecutrix (name withheld). As per the FIR, the petitioner had circulated certain photographs of the prosecutrix on whatsapp and sent/delivered certain offensive messages on her mobile. It is stated that prosecutrix on gaining knowledge of acts of petitioner, informed her parents who tried to get respectables of the village involved in the matter. However on 26.8.2020, the petitioner again circulated photographs. It is alleged that on 27.8.2020 at about 7.30 PM, when the prosecutrix was going to temple, the petitioner forcibly dragged her in his shop and did obscene acts. On her resistance, she was threatened to be eliminated.

Learned counsel for the petitioner contends that the prosecutrix and the petitioner are known to each other since long as they are co-villagers. It is submitted that prosecutrix is major, the reliance is upon photographs (Annexure P-3) to submit that the prosecutrix had relations with the petitioner.

It is contended that uncle of the petitioner lodged FIR No. 69 dated 13.6.2018, under Section 420 IPC, registered at Police Station, Sadar Gurdaspur against the parents of the prosecutrix, the matter was compromised during the pendency of bail petition in this Court in 2019 and the present FIR is a counter blast. The argument is that there is delay of three months in registering the FIR.

Though the complainant has not been impleaded as party, but Mr. Ritesh Pandey, Advocate puts in appearance on behalf of the complainant and submits that the matter was investigated by the Cyber Crime and it was on receiving the report that FIR was registered, hence there was delay of three months.

Learned counsel for the State submits that during the investigation, it has been found that the petitioner has uploaded certain material on whatsapp which is objectionable.

The fact that the petitioner and the prosecutrix were known to each other does not entitle the petitioner to misuse the social media and circulated objectionable material. Reliance on photographs (Annexure-P3) does not enhance the case of the petitioner. There is no date on the photographs and moreover even assuming that these photographs were earlier in time, this is not enough to permit the petitioner to malign the image of a girl. The allegation that the present FIR is a counter blast to the earlier FIR registered by the uncle of the petitioner *prima facie* does not appear to be correct. The matter was compromised way back in 2019, the present FIR is of 9.12.2020. It is very difficult to swallow such allegations would be made as a counter blast. There is another aspect of the matter, during investigation it is found that objectionable material was used by petitioner on social media.

The delay in registering the FIR will not itself be fatal. The matter was investigated by the Cyber Cell and on receiving the report, the FIR was registered.

Learned counsel for the petitioner argues that apart from Section 354-A IPC, the offences are bailable. This would not be stage to decide the merits of Section 354-A IPC. Considering the seriousness of the allegations and this being a case where custodial interrogation would be necessary to recover the material available with the petitioner against the prosecutrix, no case is made out for anticipatory bail.

The petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

05.01.2021
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Whether speaking/reasoned	Yes
Whether reportable	Yes