

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(216)

CRM-M-8236-2021

Date of Decision: 10.02.2022

Bhardwaj Das

--Petitioner

Versus

State of Haryana

--Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.**

Present:- Mr. Puneet Kakkar, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

Mr. Mukesh Rao, Advocate for the complainant.

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**RAJESH BHARDWAJ.J (Oral)**

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed under Section 438 Cr.P.C for grant of pre-arrest bail to the petitioner in FIR No.532 dated 28.11.2019 registered under Sections 66(C), 67(a) of I.T Act, sections 506 and 376 (2) (N) IPC (added later on) at Police Station, Dabua, District Faridabad.

By virtue of the order dated 22.2.2021 while granting interim protection, the petitioner was directed to join investigation.

It has been contended by learned counsel for the petitioner that in pursuance to the order dated 22.2.2021, the petitioner has joined the investigation and fully cooperated and thus, the interim order may kindly be made absolute.

Learned State counsel has endorsed the fact that petitioner has joined investigation and submitted that petitioner is no more required for further investigation.

Learned counsel for the complainant has however opposed the submissions made by counsel for the petitioner. He submits that there are specific allegations against the petitioner in the FIR. It is submitted that the FIR in question was lodged by the husband of the victim, wherein there are specific allegations of establishing forceful physical relationship with his wife and making some videos as well. It is further submitted that subsequent to this FIR the victim wife has sent a complaint dated 12.12.2020 to the Commandant of the Battalion where the petitioner is posted and in that complaint as well the victim has levelled the allegations against the petitioner. It is submitted that her statement under Section 164 Cr.P.C was recorded in which the allegations in the FIR are reiterated.

Learned counsel for the petitioner submits that the petitioner as well as the complainant are of age of majority and as per record of the case she is mother of two children and she is a nurse by profession. It is further submitted that at the most this is a case of consensual relationship and in view of the law settled by the Hon'ble Supreme Court in case of ***Pramod Suryabhan Pawar Vs. The State of Maharashtra & Anr., 2019(9) SCC 608*** there is no misconception of the fact on the part of the petitioner. It is submitted that in the present case the accused and the complainant are consenting parties, it became debatable whether the physical relationship would amount to the offence under Section 376 I.P.C.

In view of the arguments advanced by learned counsel for the parties and the record of the case, it is apparent that the veracity of allegations and counter allegations would be a subject matter of the trial and would be evaluated on the basis of the evidence led by the parties.

In view of the overall facts and circumstances of the case, the order dated 22.2.2021 is made absolute subject to compliance of conditions as envisaged under Section 438(2) Cr.P.C and the petition stands allowed.

(RAJESH BHARDWAJ)  
JUDGE

10.02.2022  
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| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |