

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

CRM-M-14502-2022

Date of Decision: 21.7.2022

Raj Kamal Jha

..... Petitioner

Versus

U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashwani Antil, Advocate for
Mr. Hitender Kansal, Advocate, for the petitioner.
Mr. Abhinav Gupta, Addl. PP, UT, Chandigarh.
Mr. I.B. Bhandari, Advocate, for the complainant.

Rajesh Bhardwaj, J.

Prayer in the present petition is for grant of anticipatory bail to the petitioner in a case FIR No.26 dated 8.2.2022 registered under Sections 354(D), 376(2)(n), 377 IPC read with Section 6 of POCSO Act, at Police Station Sector-36, Chandigarh.

As per the factual matrix of the case, the present FIR was lodged by prosecutrix herself (name concealed) alleging therein that on 12.4.2021, the petitioner allegedly took her to Hotel Amar Residency and thereafter on pretext of marriage, he made physical relations with the prosecutrix. The petitioner took the prosecutrix many times to the same hotel and had unnatural sex with her. On 12.12.2021, at Mansa Devi he falsely pretended to have done engagement with her and thereafter he completely refused to honour the promise made to her. Complaint was filed to the Police for lodging the FIR against the petitioner accused. On registration of FIR, investigation commenced. Apprehending his arrest, the petitioner approached the learned Fast Track Special Court, Chandigarh

praying for grant of anticipatory bail, who after hearing learned counsel for the parties, declined the same vide its order dated 15.3.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition praying for grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present FIR. He submits that in view of the law settled by Hon'ble Supreme Court in State of Madhya Pradesh vs. Munna alias Shambhoo Nath, (2016)1 SCC 696, offence under Section 376 IPC is not attracted against the petitioner. He submits that the petitioner and the prosecutrix belongs to the same locality and they were friends, however, the petitioner was being blackmailed by the prosecutrix by lodging false and frivolous FIR, just to pressurize the petitioner to marry her. He submits that the petitioner filed a complaint to the Police for granting protection, however, no action was taken on the same. Thereafter, he approached this Court by way of filing CRWP-1171-2022 seeking direction to the police to decide the representation filed by the petitioner, which was disposed of by this Court vide order dated 9.2.2022. He submits that as the petitioner has been falsely and frivolously implicated and no offence as such is made out, he deserved to be granted pre-arrest bail.

This Court vide order dated 6.4.2022 issued notice to the State and directed it to file status report. In pursuance to the same, short reply by way of affidavit of Inspector Jaspal Singh, Station House Officer, Police Station Sector-36, Chandigarh has been filed.

Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that after the

registration of the FIR, statement of the prosecutrix under Section 164 Cr.P.C was recorded, wherein, she has categorically made allegations against the petitioner. The age of the prosecutrix was verified from Government High School, Hallomajra, Chandigarh and her date of birth was found to be as 1.4.2006 and thus, was minor. He submits that during the investigation, the record of the Hotel was verified and it has come on record that the petitioner took the prosecutrix to the Hotel firstly on 12.4.2021 and thereafter, on 15.4.2021, 19.4.2021, 20.4.2021, 30.6.2021, 13.7.2021, 30.8.2021, 1.9.2021 and 22.11.2021. He submits that in pursuance to the order dated 9.2.2022 passed in CRWP-1171-2022 filed by the petitioner, enquiry was conducted by the Deputy Superintendent of Police, HQ, Chandigarh. During the course of enquiry, the petitioner was not found to be residing at the given address and his mobile was also found to be switched off. He submits that the petitioner has committed heinous offence against the minor and his custodial interrogation is required.

Heard learned counsel for the parties and perused the record.

Apparently, the prosecutrix is minor and she has supported the case of the prosecution while recording her statement under Section 164 Cr.P.C. During the investigation, it has come on record that the petitioner had taken the prosecutrix to the Hotel on various dates. For consideration of pre-arrest bail, the Court is to take into consideration the statutory provisions of Section 438 (1) Cr.P.C. Hon'ble the Apex Court in plethora of judgments also reiterated time and again to take into consideration these parameters like the gravity of the offence, chances of accused tampering with the evidence and probabilities of the accused fleeing from justice etc.

Hon'ble the Supreme Court in State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187 has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

Weighing the facts and circumstances of the present case, and on the anvil of statutory parameters, this Court finds that the petitioner do not qualify for invoking the extraordinary jurisdiction in his favour, hence, the present petition being devoid of any merit is, hereby, dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

21.7.2022
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No