

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-26846-2022
Reserved on: 25.07.2022

Date of Decision: July 27, 2022

Ankush Kumar @ Ankush Kumar Khurana

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Sumeet Goel, Senior Advocate with
Mr. Gaurav Verma and
Mr. A.K. Ranolia, Advocates,
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana

Mr. Akshay Bhan, Senior Advocate with
Mr. Rakesh Dhiman and
Mr. HPS Sandhu, Advocate,
for respondent no.2/complainant.

Vivek Puri, J.

The petitioner is seeking anticipatory bail in the case bearing FIR No. 689, dated 29.04.2022, under Sections 376(2)(n), 506 of the Indian Penal Code, registered at Police Station Shivaji Nagar, District Gurugram.

Briefly, as per the allegations of the prosecution, the prosecutrix is working as a doctor by profession and

having two sons aged about 15 years and 13 years. The whereabouts of her husband are not known since the year 2015. The petitioner was an old acquaintance of the prosecutrix and he is working as an astrologer. On account of disturbed mental condition, the prosecutrix approached the petitioner who assured that he will visit the house of the prosecutrix at Gurgaon and set everything right. The petitioner visited the house of the prosecutrix and by taking in her confidence and also by exerting pressure made physical relations with her. On resistance from the prosecutrix, the petitioner threatened to make her obscene video in his mobile viral.

Learned senior counsel for the petitioner has argued that the petitioner and the prosecutrix are aged about 48 and 44 years respectively. They were known to each other since long even from the time when they were students. After solemnizing the marriage, the relationship between the petitioner and the prosecutrix came to an end. The first marriage of the prosecutrix had failed and her second husband went missing. The Whatsapp chat between the petitioner and the prosecutrix indicates that they were known to each other. Furthermore, after the registration of the FIR, the matter was settled and a joint statement and written apology (Annexure P-5 and P-6) were scribed. In the joint statement, the prosecutrix has admitted the fact that

they had indulged in physical relationship with consent in the year 2018-2019. It is a case of relationship having gone astray. It is a case of consensual relationship. The occurrence took place in the year 2018 and there is substantial delay in lodging the FIR.

Learned State counsel has resisted the bail application and argued that there are specific and categorical allegations leveled against the petitioner in the FIR as well as in the statement of the prosecutrix recorded under Section 164 Cr.P.C. Furthermore, the mobile phone of the petitioner containing obscene photographs/videos is to be recovered.

Learned senior counsel appearing on behalf of the respondent no.2/complainant has opposed the bail application on the score that the first husband of the prosecutrix had passed away. Her second husband went missing in the year 2015. The prosecutrix was under depression and the petitioner had exploited and taken undue advantage of her disturbed state of mind. There is nothing to suggest that it is a case of consensual relationship. Even if the petitioner and the prosecutrix were acquainted with each other, it does not give any license to the petitioner to physically abuse the prosecutrix. Moreover, the joint statement (Annexure P-5) does not bear the signatures of the prosecutrix. The delay in lodging the FIR is

immaterial. The petitioner has been threatening to make video viral and furthermore, the prosecutrix is having two grown up sons which might have prevented her from reporting the matter to the police at the earlier instance.

The whatsapp chats between the petitioner and the prosecutrix at the most indicate that they are acquainted with each other. It will be too early to conclude that such acquaintance had gone to the extent of developing consensual physical relationship. The joint statement wherein the prosecutrix had allegedly admitted the fact of consensual relationship cannot be relied at this stage, as admittedly, the same does not bear the signatures of the prosecutrix. The prosecutrix has leveled specific and categoric allegations against the petitioner in making physical relations by exerting pressure upon her. Even in her statement recorded under Section 164 Cr.P.C., she has stated that the petitioner had been representing that her disturbed mental condition will be cured with physical relationship. On her refusal, the petitioner has been threatening to make the pictures viral on social media. As per the allegations, the petitioner had been taking undue advantage of the disturbed family circumstances and state of mind of the prosecutrix and consequently, physically exploited her. The recovery of mobile phone is yet to be effected. It will be too early to discard the case of the

prosecution on the score that there is a delay in lodging the FIR. The version of the prosecution is to the effect that the petitioner had been threatening to make her videos/photographs viral. Furthermore, the prosecutrix is having two grown up sons. The lurking fear in the mind and to save the honour of the family, she might have refrained from reporting the matter to the police at the earlier instance.

The anticipatory bail is not to be granted lightly. the same can be granted after careful assessment of the relevant facts and circumstances emerging on record. The nature and gravity of accusations are the significant factors which are to be looked into while extending the concession of pre-arrest bail. In the case in hand, the matter requires thorough probe and investigation and no extra ordinary circumstances are made out to extend the concession of pre-arrest bail to the petitioner.

In view of above discussion, the instant petition is dismissed.

July 27, 2022
vkd

(Vivek Puri)
Judge

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