

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48680-2021
Date of Decision: 17.02.2022

HARKESH DAGAR

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Karan Pathak, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Vishal Yadav, Advocate for the complaint.

(The case has been taken up through video conferencing on account of Covid-19 pandemic)

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VIVEK PURI, J. (ORAL)

Petitioner is seeking anticipatory bail in case bearing FIR No.569 dated 28.07.2021 under Sections 323, 328, 376B, 450 and 506 IPC, registered at Police Station Camp Palwal, District Palwal.

On 22.11.2021, following order was passed:

“Harkesh Dagar-petitioner is seeking anticipatory bail under Section 438 Cr.P.C in the case bearing FIR No. 569 dated 28.07.2021 under Sections 323/328/376-B/450/506 IPC, registered at Police Station Camp Palwal, District Palwal.

Briefly, the FIR has been registered on the allegations that the prosecutrix is the wife of the petitioner residing separately from him on 26.05.2021 in her parental house. On 27.07.2021, at about 10.00 AM, the petitioner came to the parental house of the prosecutrix, made her to sniff something and committed forcible sexual intercourse upon her.

It has been contended by the learned counsel for

the petitioner that the offence under Section 376-B is bailable and even as per the observations recorded in the impugned order the offence under Section 450 IPC is not made out. The marriage of the petitioner was solemnized with the prosecutrix as back as on 19.05.2005 and three children were born from the wedlock. The petitioner is Ex-army man and there is no medical evidence to substantiate the allegations with respect to commission of offence under Section 328 IPC. Moreover, at the earlier instance, the prosecutrix had submitted a complaint under Section 406 and 498-A IPC against the petitioner at Police Station Camp Palwal, District Palwal on 10.7.2021 but no FIR was registered at first instance. Subsequently, the present FIR was lodged and thereafter, a separate FIR with regard to the offence under Sections 406/498-A IPC has been registered on 10.10.2021.

Notice of motion.

Mr. Zorawar Singh Chauhan, DAG, Haryana accepts notice on behalf of the respondent-State.

Mr. Vishal Yadav, Advocate has put in appearance on behalf of the complainant and filed his memo of appearance.

Adjourned to 17.2.2022.

Meanwhile, it is directed that in the event of arrest, the petitioner be admitted on interim bail on furnishing bail bonds to the satisfaction of the Arresting Officer subject to the condition that he join the investigation and comply with other conditions as specified under Section 438 (2) Cr.P.C.”

Learned counsel for the petitioner contends that in pursuance to the interim directions issued by this Court, the petitioner has joined the investigation and his custodial interrogation is not required.

On the instructions from ASI Renu, learned State counsel has not assailed the aforesaid factual aspects.

The petitioner has joined the investigation in pursuance to the interim directions issued by this Court, his custodial interrogation is not required, the prosecutrix is the wife of the petitioner, the offence under Section 450 IPC is not made out as recorded in the impugned order, the marriage of the petitioner was solemnized with the prosecutrix on

19.05.2005, three children were born out of the wedlock and the commission of offence under Section 328 IPC will be debatable. Furthermore, at the earlier instance also, the prosecutrix has submitted a complaint under Section 406, and 498-A IPC against the petitioner at police Station Camp, Palwal, District Palwal but no FIR was registered.

As such sufficient exceptional circumstances are made out to extend the concession of pre-arrest bail to the petitioner. The order dated 22.11.2021, vide which the petitioner was granted interim bail, is made absolute. However, the petitioner shall abide by the conditions stipulated under Section 438(2) Cr.P.C.

The petition stands allowed.

17.02.2022
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(VIVEK PURI)
JUDGE

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