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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21908-2022 (O&M)
Date of Decision:09.03.2023

KAPIL KUMAR

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

Ms. Dimple Jain, AAG,Haryana.

Mr. Tejas Bansal, Advocate for
Mr. Sanjiv Kumar Aggarwal, Advocate
for the complainant.

JAGMOHAN BANSAL, J. (Oral)

On 20.05.2022 following order was passed:

“Prayer in the present petition is for grant of anticipatory bail to the petitioner in a case FIR No.163 dated 3.4.2022, registered under Sections 323, 376, 450, 506 IPC and Section 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Civil Lines Sirsa, District Sirsa.

Learned counsel for the petitioner has vehemently contended that implication of the petitioner in this case is nothing but an abuse of the process of the Court. He submits that the prosecutrix is a married woman and mother of three children. He has submitted that on the earlier occasion also, the same prosecutrix implicated the petitioner for the same offences on the similar set of allegations in FIR No.14 dated 23.5.2018, under Sections 376(2)(n), 377, 451, 506 IPC, Police Station Women, Sirsa. He submits that interestingly the prosecutrix turned hostile and on account of the same the

petitioner was acquitted by the trial Court vide its order dated 19.1.2019. He has submitted that exactly on the similar set of allegations now the prosecutrix has again implicated the petitioner for the same offences. He submits that admittedly, both the petitioner and the prosecutrix are of the age of majority and the probability of false implication of the petitioner is writ large. He submits that though in the statements of the prosecutrix recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. she reiterated her allegations in the FIR, however, the petitioner does not lose his right of liberty just because of the false and frivolous allegations. He further submits that the same prosecutrix had also lodged another FIR against the petitioner and the petitioner was acquitted in that case also by the trial Court vide order dated 31.10.2019. He submits that at the most the relationship could be consensual and hence, the offence under Section 376 IPC would not be attracted. He submits that prosecutrix is chronic litigant, which is evident from the overwhelming facts on record. He submits that in view of the above, no case for custodial interrogation is made out, however, the petitioner is ready to join the investigation and abide by the terms and conditions of the anticipatory bail, if this Court considers his request for granting the same.

Notice of motion.

Mr. B.S. Virk, Deputy Advocate General, Haryana accepts notice on behalf of the State and Mr. Sanjeev Kumar Aggarwal, Advocate, accepts notice on behalf of the complainant.

Learned counsel for the complainant has opposed the submissions made by learned counsel for the petitioner and submitted that though the petitioner was acquitted in the earlier cases filed by the prosecutrix, however, that is not sufficient enough to grant anticipatory bail to the petitioner. He submits that the FIR against the petitioner is for heinous offences and the petitioner does not deserve the concession of

bail.

The parties are at loggerheads, is evident from the facts and circumstances of the case at this stage. This Court finds that the petitioner deserves to be directed for joining the investigation.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C:-

(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so.

(ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

(iii) That the petitioner shall not leave India without prior permission of the court. Adjourned to 29.8.2022. Let the State file the status report.”

On 03.02.2023, the matter came up for consideration before this Court. The petitioner was directed to hand over his mobile phone as well as laptop to the Investigating Officer.

Learned State counsel submits that petitioner has joined investigation and he has further handed over mobile as well as laptop to the Investigating Officer. She further submits that till date they have not found any incriminating material in the mobile phone and laptop and matter is under investigation and if any adverse material is found, he would be summoned.

Learned counsel for respondent No.2-complainant submits that

there are serious allegations against the petitioner, thus, inspite of joining investigation, he does not deserve concession of anticipatory bail.

The petitioner has joined investigation and has handed over his mobile phone as well as laptop. He is not required for custodial interrogation.

In view of the above, the petition is allowed and the interim protection granted to the petitioner vide order dated 20.05.2022 is made absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C

If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

It is made clear that petitioner shall appear before the Investigating Officer as and when summoned.

Pending application, if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

09.03.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>