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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-26642-2023

Date of decision: 19th December, 2023

Tajinder Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Veneet Sharma, Advocate for the petitioner.
Mr. Kunwarbir Singh, AAG, Punjab.

MANISHA BATRA, J.:-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
87	17.02.2023	Islamabad, Amritsar City, District Amritsar	363, 366, 376, 342, 427, 201 of Indian Penal Code, 1860 (For short ‘the Act’)

2. The brief facts of the case relevant for the purpose of disposal of this case are that the aforementioned FIR had been lodged on the basis of statement recorded by the complainant ‘K’ (name withheld) on 17.02.2023 alleging therein that her mother has died and she remains at her house. About three months back, the accused who is residing in the neighbourhood had contacted her through phone and thereafter a friendship had developed between them. The petitioner had proposed marriage to her. On 12.02.2023, he called her at about 11:30 AM and asked her to be ready with her

documents like Aadhar Card and qualification certificates by saying that they would perform marriage. Being induced by her, she left her house on the same day at about 4-4:30 PM with the requisite documents. The petitioner had told her that his friend Jatin would pick her up. The said Jatin picked her up on his bike from the area near Gali No. 5. He took her to the place where the petitioner was standing with his Activa vehicle. After taking her phone, he damaged its SIM card and threw the phone in the bushes. Thereafter, he took her to hotel Five Season, near DAV College, Sikandri Gate. Jatin was also accompanying them. He took her to Room No. 204 where they stayed from the evening of 12.02.2023 to 14.02.2023. On the pretext of marriage with her, he developed physical relations with her without her consent. He also kept her identity proof and certificates with him. On 14.02.2023, he dropped her near Mohini Park and on asking the question about performance of marriage, he avoided the same by saying that they will meet again. She alleged that the petitioner, thereafter, neither came to meet her nor he returned her identity proof and educational certificates. Ultimately, she had informed about the incident to her sister Anjana who had contacted the accused but he bluntly refused to marry with her and even denied that he knew the victim. While alleging that he had ravished her on the pretext of marriage, she prayed for taking penal action against the petitioner and his friend Jatin. After registration of the FIR, investigation proceedings have been initiated.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that it was infact the prosecutrix who had been insisting the petitioner to meet her on 12.02.2023. She had clicked

photographs by using the mobile of the friend of the petitioner. She was major. she had been connected with the petitioner on various platforms and even sister of the prosecutrix knew about this fact and has sent friend request to him. No forcible act of rape has been committed by the petitioner and he has been falsely implicated in this case. He had moved an application for anticipatory bail before the trial Court, which had been dismissed. Therefore, it is urged that he deserves to be given concession of bail.

4. Vide order dated 29.05.2023, passed in this case, the petitioner was directed to join the investigation.

5. Status report has been submitted by learned State counsel-respondent, as per which, the petitioner had joined the investigation on 05.06.2023⁶. However, learned State counsel has argued that the custodial interrogation of the petitioner is required for conducting thorough and fair investigation in the matter. There are serious allegations against the petitioner. There are chances of his tampering with the prosecution evidence and inducing the prosecution witness by use of interfere means. Hence, it is argued that petition does not deserve to be dismissed.

6. I have heard learned counsel for the petitioner and learned State counsel and have perused the record.

7. The petitioner is alleged to have induced the petitioner to go with him to a hotel and is further alleged to have developed forcible physical relations with her on the pretext of marriage. As per the petitioner, it is a case of consent. He has placed on record copies of certain WhatsApp chats between them and photographs alleged to have been taken by the prosecutrix in the hotel room while she was present alongwith him. However, at this

stage, no inference can be drawn from these photographs and WhatsApp chats in favour of the petitioner. There are serious allegations against the petitioner. Thorough and proper investigation is required to be conducted by the Investigating Officer. Simply because custodial interrogation of the petitioner might not be required, he cannot claim the benefit of pre-arrest bail as a matter of right. The well settled proposition of law is that it is a misconception that if no case for custodial interrogation is made out by the prosecution, that alone is a good ground to grant anticipatory bail. Reliance can be placed upon the observations made in this regard by the *Hon'ble Supreme Court* in *Sumitha Pradeep Vs. Anu Kumar C.K. (SC), 2022(4) R.C.R. (Criminal) 977*, wherein it was observed so and it was also held that the first and foremost thing that the Court hearing an anticipatory bail application should consider is that a *prima facie* case is made out against the accused. Nature of offence should be looked into alongwith severity of the punishment thereafter. Keeping in view the nature of the allegations as levelled against the petitioner which are grave and specific, the quantum of the sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the opinion of the no case for exercising powers under Section 438 of Cr.P.C. which are even otherwise are required to be exercised in sparing and extra ordinary circumstances is made out.

8. Accordingly, the present petition is dismissed.

[MANISHA BATRA]
JUDGE

19th December, 2023

Parveen Sharma

1. Whether speaking/ reasoned
2. Whether reportable

: Yes / No
: Yes / No