

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

280

CRM-M-26798-2023 (O&M)
Date of decision: 12.12.2023

Krishan**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 438 of Cr.P.C. by the petitioner seeking grant of anticipatory bail in case FIR No. 7 dated 21.03.2023, registered under Sections 354D, 419, 506 and 509 of the IPC at Police Station Cyber Crime, District Palwal.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the complaint filed by the complainant 'K' (*name withheld*) alleging therein that his brother was married to 'R' (*name withheld*). She along with her parents used to live with her brother and 'R'. The behaviour of 'R' with her parents was not good. She used to misbehave with them and was also jealous of the complainant. She had connived with the present petitioner, who is her real brother, and at the behest of 'R', the petitioner had started maintaining intimate relationship with the complainant. He had got photographs of their private moments clicked and

Neutral Citation No. 2023:PHHC:153179

had also prepared videos of those moments and thereafter he started physically exploiting her by extending threat to make those photographs and videos viral. She got married with one 'J' (*name withheld*) on 29.06.2020. The petitioner called her on her phone and by extending threat to spoil her matrimonial life, he told her to part with money and also to go according to his wishes. The complainant was compelled to give a sum of Rs. 30,000/- to the petitioner and when she refused to give him any more money, then he started sending videos and threatening messages on the phone of her father. He even sent photographs and videos of their intimate moments through some foreign number on the phone number of the husband of the complainant. She had filed a complaint in this regard against the petitioner on 05.07.2021. The petitioner at that time, while admitting his fault, had apologized and assured to not to commit such acts further, but 3/4 months thereafter, he prepared a fake ID at Instagram App and started sending her letters and photographs to her husband. He also extended threats to kill her husband and abused her and he was continuing doing so. She prayed for taking action against the petitioner. A case under Section 354D, 419, 506 and 509 of the IPC was registered and the investigation proceeding are going.

3. The present petition has been filed by the petitioner on the ground and it has been argued by his counsel that he has been falsely implicated in this case. The complainant, in her statement recorded before the trial Court, has admitted that she had voluntarily and willingly maintained physical relationship with the petitioner prior to her marriage. In her previous complaint, no allegations of demand of money and physical torture have been levelled against the petitioner by the complainant. He had never uploaded photographs, videos or letters on social media. There was no material on record to show so. The mobile

Neutral Citation No. 2023:PHHC:153179

phone number 7015220823, which was alleged to have been used by him, was in the name of complainant herself. No case for commission of subject offences had been made out against the petitioner. He was a married person and was employed as Fisheries Officer in Fisheries Department, Palwal. His custodial interrogation is not required. He is ready to join investigation. No recovery is to be effected from him. Hence, it is urged that the petitioner deserves to be given concession of anticipatory bail.

4. Respondent-State has filed a status report alleging that there are serious and specific allegations against the petitioner. Offences 384 IPC and Sections 66(c), 67 and 72 of the Information Technology Act have been added during the course of investigation as against the petitioner. He had taken obscene photographs and videos of the victim and had uploaded the same on social media and also sent the same to her husband to cause disturbance in her matrimonial life. Recovery of mobile phone, which was used by the petitioner, is yet to be effected. His custodial interrogation is required for thorough investigation of the matter by the police. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at a considerable length and have perused the record.

6. The petitioner is alleged to have captured photographs and made videos of the victim when she was in relationship with him and is further alleged to have been blackmailing and harassing her by attempting to make contact with her to maintain illicit relationship, despite disinterest on her part. He is also alleged to have extracted a sum of Rs. 30,000/- from her and extended threats to her. He is alleged to have committed such acts, so as to cause disturbance in her matrimonial life. The allegations against him are serious in nature. Taking the peculiar facts and circumstances into consideration, I am of the considered

Neutral Citation No. 2023:PHHC:153179

opinion that custodial interrogation of the petitioner is required for conducting a proper and thorough investigation in the matter. Even otherwise, no such extraordinary or sparing circumstance has been made in this case, which warrants exercise of powers to grant anticipatory bail to the petitioner. Recovery of the mobile phone, which had been used by the petitioner, is yet to be effected. More so, only because of the fact that the custodial interrogation of an accused might not be required, by itself is not a good ground to grant anticipatory bail. It is well settled proposition of law that the first and foremost thing is that the Court, hearing an application for grant of anticipatory bail, should consider the *prima facie* case put up against the accused. Nature of offence is also to be looked into along with severity of the punishment thereafter. In this context, reference can be made to the observations made by the Hon’ble Supreme Court in the judgment dated 21.10.2022 passed in ***Criminal Appeal No. 1834/2022***, arising out of ***SLP (Cri) NO. 7188/2022***, titled as ***Sumitha Pardeep vs. Arun Kumar C.K.*** The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. However, no such circumstance has been made out in this case. The custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful informations. The custodial interrogation is qualitatively more elicitation oriented than questioning a suspect which is well ensconced with a favourable order under Section 438 of Cr.P.C. Hence, the present petition is dismissed.

12.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes