

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**213****CRM-M No.30970 of 2023****Date of Decision : 18.12.2023**

Rakesh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG Haryana.

Mr. Arun Sharma, Advocate for the complainant.

ALKA SARIN, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.339 dated 01.05.2023 under Sections 376(2)(n), 452, 506 of the Indian Penal Code, 1860 and Sections 67-A of Information Technology Amendment Act 2008, registered at Police Station Barwala, District Hisar.

2. On 21.06.2023 the following order was passed :

“Prayer in the present petition is for the grant of anticipatory bail to the petitioner, in case FIR No.339 dated 01.05.2023, under Sections 376(2) (n)/452/506 of the Indian Penal Code, 1860 and Sections 67-A of Information Technology Amendment Act 2008, registered at Police Station Barwala, District Hisar.

Learned counsel for the petitioner contends that

the FIR has been registered after a delay of one year and six months. He further submits that even if all allegations are believed to be correct, no offence under Section 376 (2) (n) IPC is made out and in-fact, the very language of the complaint on the basis of which the FIR was registered would suggest that it was a case of consent as both the petitioners are majors and the victim is a married lady having a five year old child. He further submits that in so far as the offence under Section 67-A of the Information Technology Amendment Act, 2008, is concerned, no certificate under Section 65-B of the said Act was produced, in the absence of which, no reliance can be placed upon the alleged video clip which the Investigating Officer claimed to have downloaded from some social media site. Reliance in this regard has been placed upon Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, 2020 (3) RCR (Civil) 256.

Notice of motion.

Mr. Rajiv Goel, DAG., Haryana, accepts notice on behalf of the respondent-State.

List on 29.08.2023.

In the meantime, the petitioner is directed to appear before the Arresting/Investigating Officer and join investigation. In the event of arrest, he shall be released on interim bail to the satisfaction of Arresting/Investigating Officer subject to compliance of the provisions of Section 438(2) Cr.P.C.”

3. Learned counsel for the petitioner states that the petitioner has since joined the investigation and fully cooperated.

4. Status report by way of affidavit of Sh. Gaurav Sharma, HPS, Deputy Superintendent of Police, Barwala, Hisar has been filed by the

respondent-State, which is taken on record. Registry to scan the same and tag at the appropriate place. Learned counsel for the State on instructions from Inspector Mohinder Singh has stated that the petitioner has since joined investigation and fully cooperated and that he is no longer required for further custodial interrogation as of now.

5. Learned counsel for the complainant has contended that after passing of the interim order the petitioner had trespassed the house of the complainant and a FIR was registered *qua* the same.

6. Learned State counsel on instructions from Inspector Mohinder Singh has stated that in the said FIR a cancellation report has been prepared.

5. In view of the above, the order dated 21.06.2023 is made absolute. The petitioner shall, however, join investigation as and when called. The petitioner shall also abide by all the terms and conditions as specified under Section 438(2) of the Code of Criminal Procedure, 1973.

6. Disposed off accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

18.12.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO