

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

286

CRM-M-32309-2023 (O&M)

Date of decision: 05.12.2023

Sanjay Kumar**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sandeep Arora, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

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. 19 dated 22.03.2023, registered under Sections 376, 328, 506 of the IPC at Police Station Satnampura, District Kapurthala.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by the prosecutrix 'R' (*name withheld*) alleging therein that she had performed two marriages and was living separately from her second husband for about 1 ½ years. She was working with one group, which performed religious events, named as Jata Dhari Group of Jalandhar. The petitioner also used to join this group sometimes. On 16.02.2023, she had met him for the first time in Ludhiana at some programme. They had exchanged phone numbers and had been talking to each other on phone since then. She had shifted to a rented room near Ayat Apartments on 10.03.2023. On 16.03.2023, after doing her work with the

aforementioned group, while she was going back towards her room, the petitioner had accompanied her. As both of them were hungry, the petitioner had brought pizza and Coke and had offered the same to her in her room. After consuming the same, she started feeling drowsiness and at once had slept. On waking up after one hour, the petitioner told her that he had clicked her photographs on his phone in objectionable postures and on making request by her to delete the same, he pressurized her to have physical relations with him and committed rape upon her. The prosecutrix requested him as well as his relatives to get those photographs deleted but they did not listen to her. Then she disclosed the incident to one Gurpreet Singh and had reported the matter to the police. After registration of the FIR, investigation proceedings have been initiated and the same are going on. The petitioner had filed an application for grant of anticipatory bail before the Additional Sessions Judge, Kapurthala but the same had been dismissed, vide order dated 07.06.2023 (Annexure P-2).

3. The present petition has been filed by the petitioner on the ground and his counsel has argued that he has been falsely implicated in this case. There is no material on record to show that the victim had been sexually assaulted at the hands of the petitioner. There was unexplained delay in reporting the matter to the police. Infact, it was a case of consensual relationship, which turned sour. The petitioner is ready to join investigation. His custodial interrogation is not required. Neither any recovery is to be effected from him. Therefore, it is urged that the petitioner deserves to be given concession of anticipatory bail.

4. *Per contra*, learned State counsel has resisted the prayer made

by the petitioner in terms of the status report dated 07.08.2023. He has argued that there are specific and serious allegations against the petitioner. In the FIR as well as in her statement recorded under Section 164 Cr.P.C., the victim had implicated the petitioner in the subject crime. His custodial interrogation is must for thorough investigation in the matter. Henc, it is argued 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 made the victim consume some intoxicating substance on 16.03.2023 and is further alleged to have taken her photographs in obejctionable condition. He is further alleged to have committed rape upon her by extending threat to her. The allegations against him are serious in nature. His custodial interrogation is required for fair and proper investigation in the matter. Even otherwise, it is well settled proposition of law that 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. More so, it is equally well settled proposition of law that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information. 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.

7. Keeping in view the nature of allegations, which have been levelled against the petitioner, the acts attributed to the petitioner and attendant facts and circumstances, I am of the considered opinion that no

ground has been made out for extending benefit of pre-arrest bail to the petitioner. Hence, the petition is dismissed.

05.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No