

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

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CRM-M-36037-2023(O&M)
Date of Decision: 09.11.2023

AMAN @ AMANDEEP

...Petitioner

Versus

STATE OF HARYANA & Anr

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Priyavrat Parashar, Advocate
for the pet.

Mr. Neeraj Poswal, A.A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition under Section 438 of Cr.P.C. has been filed by the petitioner in FIR No.56 dated 20.06.2023 under Sections 376(2)(n), 451, 506, 120-B of IPC and Section 25(IB)(a) of the Arms Act, 1979 registered at police station women District Kaithal.

2. The aforementioned FIR was registered on the basis of a written complaint filed by the prosecutrix (name withheld) on 20.06.2023 alleging therein that the petitioner-accused had been doing wrong acts with her from the last 4-5 months by extending threats to kill her. In the wee hours of 20.06.2023, he along with one unknown person criminally trespassed into her house while being armed with a revolver and by pointing the said firearm on his head, he again did wrong act with her while extending threat to kill herself and her children if she raised any noise. Her husband had gone to the fields at that time. She prayed for taking action against the culprit. After registration of the FIR, investigation proceedings

CRM-M-36037-2023(O&M)

have been initiated. The petitioner had moved an application for grant of anticipatory bail before learned Special Court which had been dismissed vide order dated 15.07.2023.

3. It is submitted in the petition and it has been argued by learned counsel for the petitioner that he has been falsely implicated in this case. The petitioner was in custody with effect from 10.03.2023 to 06.05.2023 in connection with case bearing FIR No.28 dated 26.01.2023 registered at Police Station Rajound, District Kaithal and as such, the allegation levelled by the prosecutrix that from the last 4-5 month prior to 20.06.2023, he had been committing any wrong act with her was false on the face of it. In fact, the petitioner had got lodged an FIR No.17 dated 05.08.2022, at police station SVB Ambala, against one Mahinder Singh who was a friend of husband of the prosecutrix and in order to pressurize the petitioner to effect compromise in the abovesaid FIR, he had been falsely implicated in this case. It is submitted that he is ready to join the investigation and even to undergo lie detection test or narco analysis test to prove his innocence. No recovery is to be effected from him. His custodial interrogation is not required. Therefore, it is argued that he deserves to be given concession of bail.

4. The petition has been resisted by the respondent in terms of the status report as submitted on 07.11.2023. It is submitted therein and learned State Counsel has vehemently argued that there are serious and specific allegations against the petitioner. His custodial interrogation is must for the purpose of recovery of the firearm i.e. revolver used by the petitioner as on 20.06.2023 for threatening the prosecutrix while ravishing her. The medico legal examination of the prosecutrix had been conducted as per which, the possibility of her being subjected to sexual intercourse could not be ruled

CRM-M-36037-2023(O&M)

out. In her statement as recorded under Section 164 of Cr.P.C. also, the prosecutrix had reiterated the allegations in the FIR. The petitioner was a habitual offender and he was involved in two more cases registered at police station Rajound. Therefore, it is submitted that no case for extending benefit of bail had been made out in favour of the petitioner.

5. The petitioner is alleged to have subjected the victim to rape in the morning of 20.06.2023 while extending threats to her and is also alleged to ravished her several times, 4-5 months prior to 20.06.2023. He has placed on record a copy of order dated 06.05.2023 passed in case bearing FIR No.28 dated 26.01.2023 registered at police station Rajound, showing that he had been extended benefit of bail in the said case on 06.05.2023. A perusal of para No.4 of this order shows that he was in custody w.e.f. 10.03.2023 to 06.05.2023. No doubt there is substance in the argument as raised by learned counsel for the petitioner that there was no question of his ravishing the victim during the period from 10.03.2023 to 06.05.2023. However, on a perusal of the contents of FIR, it is revealed that the prosecutrix had not specifically alleged that the petitioner had subjected her to rape during the aforementioned period. There are serious allegations against the petitioner. The allegations so levelled certainly require to custodial interrogation. 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 by the Court. While considering an application for grant of bail, the Court ought to be guided by consideration such as nature and gravity of the offences, the role attributed to the applicant and the facts of the case, while considering the question whether to grant an anticipatory bail or not and this is a matter of discretion of the Court. (See: **Sushila**

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6. It is also well settled that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also material which would have been concealed. 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. Keeping in view the serious nature of the allegations as levelled by the prosecutrix, the role as attributed to him and the attendant facts and circumstances of the case, I am of the opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

(MANISHA BATRA)

November 09, 2023

JUDGE

himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No