

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

205

CRM-M-41005-2022

Date of Decision: 03.02.2023

Vijay

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Ms. Dimple Jain, AAG, Haryana
(assisted by ASI Geeta)

Mr. Ashok K. Sharma, Advocate for complainant

JAGMOHAN BANSAL, J. (ORAL)

On 08.09.2022, the following order was passed:-

“Instant petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “the Code”) for grant of anticipatory bail in FIR No.145 dated 20.08.2022, registered for offences under Sections 323, 328, 452, 376(2)(n), 376(2)(f), 354-C, 506 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, at Police Station Women, Jind, Annexure P-1.

Counsel for the petitioner urges that the petitioner, who is a married man, and is posted as Constable with the Haryana Police, has been in a consensual physical relationship with the prosecutrix for the last more than 5 years. He has referred to the photographs, Annexure P-3, to buttress his argument. By relying on the bank statement, Annexure P-2, counsel submits that the petitioner has been financially supporting the prosecutrix as well as her family and the allegations levelled in the FIR are false.

Notice of motion.

On asking of the Court, Ms. Mahima Yashpal, DAG, Haryana accepts notice on behalf of the respondent-State. She is assisted by Mr. Ashok K. Sharma (Bhana), Advocate for the complainant, who has filed Memorandum of Appearance, which is taken on record. Upon instructions from L/ASI, Geeta, she submits that statement of the prosecutrix has been recorded under Section 164 of the Code, wherein she has stated that she does not want to take any action against the petitioner. However, counsel representing the complainant urges that the petitioner had sexually assaulted the prosecutrix after intoxicating her and threatened her with a pistol.

List on 27.10.2022.

Petitioner is directed to appear before the Investigating Officer at Police Station Women, Jind on 14.09.2022 at 10.00 A.M. and join the investigation and would appear as and when called by the Investigating Officer. In the event of arrest, he shall be admitted to interim bail on furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. He shall also abide by the conditions as specified under Section 438 (2) Cr.P.C.

Petitioner will furnish an affidavit to this Court as well as to the Investigating Officer, within a period of one week from today, to the effect that neither he, nor any of his family members will directly or indirectly contact or meet the prosecutrix or her family or cause any harm to them or intimidate them physically or electronically or by any other means, during the pendency of the proceedings arising out of the FIR, Annexure P-1.

It is made clear that in case the petitioner violates the undertaking, interim protection granted to him, will be vacated.”

Learned counsel for the prosecutrix submits that petitioner being police officer has misused his official position and exploited the prosecutrix. Strict action is warranted against him and he does not deserve the concession of anticipatory bail. He further submits that petitioner is harassing the prosecutrix.

Learned State counsel, on instructions from ASI Geeta, *inter alia* submits that prior to joining of investigation by the petitioner, the prosecutrix tendered her statement under Section 164 Cr.P.C. before the Magistrate, disclosing that she wants to give one more opportunity to the petitioner so that he may solemnize marriage with her. Sections 328, 354C of IPC and Section 25 of Arms Act stand deleted from the FIR. The petitioner has been put under suspension and departmental proceedings are pending against him. She confirms filing of affidavit by the petitioner in compliance of order dated 08.09.2022 of this Court. Learned State counsel further submits that petitioner has already joined investigation and no custodial interrogation is required.

Without commenting on merits, however, keeping in view factual matrix, age and conduct of parties, fact of joining investigation by petitioner, statement of learned State counsel and judgments of Hon'ble Supreme Court in *Uday Versus State of Karnataka, (2003) 4 SCC 46; Deelip Singh alias Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88;*

Deepak Gulati Versus State of Haryana, (2013) 7 SCC 675; Dr.

Dhruvaram Murlidhar Sonar Versus State of Maharashtra and Others (2019) 18 SCC 191 and *Naim Ahamed Versus State, (2023) Live Law (SC) 66*, the present petition is allowed and interim bail granted to the petitioner vide order dated 08.09.2022 is made absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C.

If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

03.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>