

2023:PHHC:138703

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

**CRM-M No.44037 of 2023
Date of Decision: 31.10.2023**

Hemant @ Hemant Kumar

.....Petitioner.

Versus

State of Haryana

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, D.A.G, Haryana
for the respondent-State.

MEENAKSHI I. MEHTA, J.

Apprehending his arrest in the criminal case arisen out of FIR No.69 dated 19.06.2023 registered at Women Police Station, Palwal, under Sections 376, 420, 323 and 506 IPC, the petitioner has preferred the instant petition for seeking the relief of anticipatory/pre-arrest bail.

2. Shorn and short of unnecessary details, the allegations, as levelled by the complainant-prosecutrix (here-in-after to be referred as 'P') in the subject FIR, are that her husband had passed away in the year 2013 and his employer had paid the compensation to her and her children and they were also receiving monthly pension on this count. In October 2017, the petitioner visited her house to collect the charges for Cable connection and told her that he liked her and wanted to marry her and made physical

relations with her. Thereafter, he elicited the information regarding her 'PhonePe' and bank accounts and the bank accounts of her children. He continued to have physical relations with her and on 30.03.2023 also, he wanted to do so and when she grumbled qua his having been so exploiting her since long on the pretext of marrying her but not having done so, he gave beatings to her, raped her and refused to marry her and later-on, she came to know that he had, fraudulently and clandestinely, withdrawn a total amount of Rs.5.5 lac from her afore-mentioned accounts.

3. Status-Report has already been submitted on behalf of the respondent-State, by way of the affidavit of the Deputy Superintendent of Police, Palwal.

4. I have heard learned counsel for the petitioner and learned State counsel in this petition and have also perused the file carefully.

5. Learned counsel for the petitioner has contended that 'P' was having consensual physical relationship with the petitioner since long and it being so, no offence under Section 376 IPC is made out against him and thus, 'P' has got him falsely implicated in the criminal case under reference and in these circumstances, he deserves the relief, as sought in the present petition. To buttress his contentions, he has relied upon the observations as made by Hon'ble the Supreme Court in **Criminal Appeal No.1165 of 2019** captioned as **Pramod Suryabhan Pawar Versus The State of Maharashtra and another (decided on 21.08.2019)**.

6. Per contra, learned State counsel has argued that the petitioner had sexually exploited 'P' on the false pretext of marriage and he had also

cheated her by withdrawing huge amount from her above-said 'PhonePe' and bank accounts, without her consent and keeping in view the nature of the crime committed by him, the instant petition be dismissed.

7. In para No.5 in the Status-Report, the details of the total sum of Rs.3,59,311/-, as transferred from the bank account of 'P' to the UPI Id of the petitioner have been disclosed. Though the petitioner has placed Annexure P-1, the copy of the legal notice shown to have been got issued by him to 'P' and her counsel regarding the transfer of the afore-referred amount, on the record but however, the fact remains that at this stage, there is nothing on the file to show that the said notice was ever actually sent and had been received by the above-mentioned addressees and also to *prima-facie* establish the version as set-forth therein. Rather, as discussed earlier, 'P' has specifically alleged in the FIR itself that the petitioner had tactfully obtained the details of her and her children's bank accounts and also of her 'PhonePe' account, from her and had withdrawn the money therefrom without her knowledge.

8. The observations made in **Pramod Suryabhan Pawar (supra)**, are of no help to the petitioner because in the afore-cited case, the appellant had filed the petition to seek the quashing of FIR and the complainant had been maintaining the physical relations with the appellant even after the exchange of arguments between them over the reservation of the appellant in marrying her whereas in the present case, the petitioner has prayed for the concession of anticipatory bail and moreover, there is nothing on the file to suggest that after having the arguments on 30.03.2023, 'P' had been

maintaining physical relations with the petitioner and as discussed above, 'P' has also levelled categorical allegations against the petitioner qua his having fraudulently withdrawn the money from her bank and 'PhonePe' accounts. The Apex Court has observed in **Megh Singh Versus State of Punjab, Appeal (Crl.) 452 of 2023** that "*the circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based.*"

9. Keeping in view the above-discussed facts and circumstances as well as the gravity of the crime as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the concession of anticipatory/pre-arrest bail. Resultantly, the petition in hand, being *sans* any merit, stands dismissed.

10. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case under reference.

October 31, 2023

Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No