

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.48424 of 2023
Date of decision: 19.12.2023

Abhishek Sharma @ Abhi Sharma

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Satpreet Grewal Kapila, Advocate,
for the petitioner.

Ms. Himani Arora, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Section 438 of Cr.P.C. seeking pre arrest bail in case arising out of FIR No.131 dated 27.08.2023 registered under Section 376 of IPC at Police Station Nangal, District Rupnagar.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered on 27.08.2023 on the basis of written complaint filed by the complainant “R” (name withheld) alleging therein that in the month of December

2021, she had come into contact with the petitioner-accused through Instagram App and they had become friends. In January 2022, on the asking of the petitioner and on promise given by him to perform marriage with her, she had gone to Nangal to meet him. He had taken her to some hotel wherein he had forcibly maintained physical relations with her on the assurance of performing marriage. Thereafter, also he called her at different places and maintained physical relations with her. While alleging that he had stopped contacting her and even her phone was going switched off, she prayed for taking action against the culprit. After registration of FIR. Investigation proceedings are complete and challan has been presented.

3. The present petition has been filed by the petitioner on the grounds and his counsel has vehemently argued that vague and false allegations have been levelled by the complainant against him. No specific date or month when the petitioner had called her and had ravished her, had been given in the FIR. The allegations on the face of record show that it was a case of consensual relationship. The breach of promise to perform marriage does not constitute offence of rape. The complainant is major and well versed. The petitioner is ready to join the investigation. His custodial interrogation is not required. Hence, it is argued that he seeks benefit of pre arrest bail. Along with the petition, he has annexed details of Whatsapp Chat having taken place between the prosecutrix as well as himself.

4. It will be relevant to mention here that vide order dated

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25.09.2023, direction was given to the petitioner to join investigation by surrendering before the Investigating Officer. Status report has been submitted. Learned State counsel has submitted that the petitioner has joined the investigation on 19.10.2023. Investigation has since been completed.

5. I have heard learned counsel for the petitioner and learned State counsel and have perused the record.

6. The petitioner is alleged to have allured/induced the complainant to enter into sexual relationship with him on the pretext of performing marriage with her. He is alleged to have repeatedly ravished her on that count and subsequently backed out from the same. His custodial interrogation might not be required further. However, that alone cannot be a good ground to grant anticipatory bail as observed by Hon'ble Supreme Court in *Sumitha Pradeep v. Arun Kumar C.K. and another*, 2022 (4) R.C.R. (Criminal) 977. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses and likelihood of fleeing justice. The Courts are required 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 whether to grant anticipatory bail or refuse it and it is a matter of discretion to grant or not to grant bail.

Reference in this context can be made to **Sushila Aggarwal and others**

v. State (NCT of Delhi), (2020) 5 SCC 1 wherein the Hon’ble Supreme Court had observed so. Applying the aforementioned conditions to the present case and keeping in view the nature of the offence alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances but without meaning to make any comment on the merits of the case, I am of the considered opinion that for conducting thorough investigation in the matter, further custodial interrogation of the petitioner is required. More so, no sparing or extraordinary circumstance has been made out entitling him to seek concession of pre arrest bail as a matter of right. Accordingly, the petition is dismissed.

19.12.2023

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No