

Neutral Citation No.2024:PHHC:058298

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

274

CRM-M No.5004 of 2024
Date of decision: 25.04.2024

Pawan ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kamal Sharma, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J.(Oral)

1. The present petition under Section 438 of Code of Criminal Procedure has been filed by the petitioner seeking anticipatory bail in case bearing FIR No.408 dated 04.12.2023, registered under Sections 376 (2) (n) and 506 of IPC at Police Station Bahalgarh, District Sonipat, Haryana.
2. Brief facts relevant for the purpose of disposal of this petition are that on 04.11.2023, the prosecutrix "P" (name withheld) submitted a written complaint at Police Station Bahalgarh alleging therein that from the last two years, the petitioner, who was a friend of her husband was on visiting terms, at her house. He was keeping an evil eye upon her and

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started harassing her. On her resistance, he extended threats to kill her children and husband due to which she had become scared. She alleged that on 07.03.2022, the petitioner took her to a hotel near Bahalgarh area and while extending threats to kill, he committed rape upon her. On 22.02.2023, he forcibly took her to Tis Hazari Court, Delhi by extending threats and performed marriage with her though she was not at all happy. On 29.10.2023, he called her on phone and told her that if she would not come to him then he would kill her husband, who was present in a Dhaba. Due to the threat so extended by him, she was again compelled to go to the same hotel wherein she was taken by him earlier and was again ravished by him. She alleged that she had disclosed about the entire incidents to her husband on that day itself. On the basis of this statement, a DDR No.23 dated 04.11.2023 was registered. However, since a complaint by husband of the complainant had already been submitted at the police station on 30.10.2023 regarding some quarrel having taken place with the petitioner, therefore, the matter was found to be suspicious. Subsequently, FIR was registered on 04.12.2023. Her statement under Section 164 of Cr.P.C. was also recorded wherein she reiterated the same allegations. The investigation is underway. The petitioner had moved an application for grant of anticipatory bail before learned trial Court which had been dismissed vide order dated 10.01.2024.

3. The present petition has been filed on the grounds and learned counsel for the petitioner has argued that he has been falsely implicated

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in this case. The husband of the prosecutrix had filed a complaint against him prior to registration of FIR in this case and a case bearing FIR No.398 dated 29.11.2023 was registered against the petitioner on the allegations of some quarrel having taken place between the petitioner, his 7-8 accomplices and the husband of the prosecutrix. It is argued that infact the petitioner and the prosecutrix were living in live-in-relationship and even an agreement of such relationship was executed by both of them on 22.02.2023. The prosecutrix was a consenting party. Rather it was she herself who wanted to have relations with him. The petitioner had been spending money for doing shopping for her and receipts Annexures P-6 and P-7 proved this fact. It is further argued that the FIR of this case was lodged as a counter blast to the complaint as filed by husband of the prosecutrix since in a quarrel having taken place between them, he had extended beatings to the latter. It is further argued that the ingredients for commission of offence punishable under Section 376 of IPC are not at all attracted in the case. The prosecutrix did not get her medical examination conducted. She has not denied her signature on the live-in-agreement. It is a case of consensual relationship between them having turned sour. The petitioner is ready to join the investigation. His custodial interrogation is not required. Therefore, it is argued that he deserves to be extended benefit of pre arrest bail.

4. Notice of the petition was given to the respondent No.2 but none has appeared on her behalf despite service.

5. Learned State counsel, on the other hand, has argued that

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allegations against the petitioner are serious in nature. For conducting thorough investigation in the matter, his custodial interrogation is must. Hence, it is urged that he does not deserve to be given benefit of pre arrest bail.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

7. As per the allegations levelled in the FIR, the petitioner who was having visiting terms with the husband of the prosecutrix and herself from the last two years was keeping an evil eye upon her and by extending threats to lives of her husband and children. He had pressurized her to come to some hotel and had ravished her therein as on 07.03.2022 for the first time and thereafter on 29.10.2023. As per the further allegations, the petitioner had even forcibly performed marriage with her on 22.02.2023. On the other hand, the case of the petitioner is that of having consensual relationship between himself and the prosecutrix. He has also placed on record Annexure P-3 copy of a live-in-agreement shown to be executed by both of them as on 22.02.2023 thereby agreeing to live with each other. The prosecutrix is an adult female. She could not be forced to sign any document against her will by the petitioner or any other person unless she herself was willing to execute such document. The live-in-agreement Annexure P-3 was executed on 22.02.2023 whereas this FIR was lodged after a gap of 10 months thereafter. If the prosecutrix had actually been forced by the

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petitioner to sign such document, then her natural act and conduct would have been to inform about this fact to her husband or any other family member which is not shown to have been done by her. The allegation that the petitioner used to call her in some hotel by extending threat to kill her family members and had ravished her on that pretext is difficult to believe at the face of it. It has also come on record that the matter had been reported by the complainant to the police and a DDR No.23 was registered on that date due to the reason that a complaint filed by the husband of the prosecutrix with regard to some quarrel having taken place between him and the petitioner had already been filed on 30.10.2023 though FIR of that complaint was registered on 29.11.2023 which is apparent from record.

8. FIR of this case was registered after a gap of one month from the date of lodging of the DDR No.23. The prosecutrix is not shown to have made any complaint about the alleged acts of sexual harassment and ravishing her being committed by the petitioner to her family members or even her husband at any point of time before 04.11.2023 thereby prima facie showing it to be a case of consensual relationship. The prosecutrix refused to get her medico legal examination conducted for which no explanation has been given. In view of the discussion as made above but without meaning to make any comment on the merits of the case, I am of the considered opinion that no useful purpose would be served by detaining the petitioner in custody and his custodial interrogation is not required. Therefore, I am persuaded to hold that the petition deserves to

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be allowed. Accordingly, the same is allowed and the petitioner is directed to appear before the Investigating/Arresting Officer to join investigation within 10 days or as and when required thereafter. In the event of his arrest, the Investigating/Arresting Officer shall release the petitioner on bail on furnishing personal/surety bonds to his satisfaction. The petitioner shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C. He will not tamper with the prosecution evidence, will not try to contact or intimidate the prosecutrix or his family members and shall also not visit the vicinity where the prosecutrix resides, till the conclusion of trial.

25.04.2024
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(MANISHA BATRA)
JUDGE

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