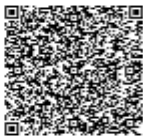


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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.5176 of 2024
Date of Decision: 18.05.2024

Nirmal Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ravi Kamal Gupta, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab.

Mr. Munish Raj Chaudhary, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The present petition has been filed under Section 438 Cr.P.C. seeking anticipatory bail to the petitioner in case FIR No.143, dated 18.12.2023, registered under Section 376 of IPC at Police Station Anaj Mandi, District Patiala.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of written complaint submitted by the complainant (name withheld) alleging therein that the petitioner who was working with her in the same company had proposed to marry with him in the year 2018. As she was not interested to get married at that time therefore, she did not give her

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consent but they remained good friends. In May 2020, the petitioner had again proposed her for marriage, when she had come to her village. He had insisted her to meet with him at Patiala and on her reaching there, by inducing to perform marriage with her, he took her to a hotel and established physical relationship with her forcibly on the pretext to perform marriage. She alleged that ever since then, several times physical relations were developed between them and then she had been impregnated by the petitioner. She told about this fact to him and asked him to solemnize marriage with her but the petitioner started putting off the matter on one pretext or the other and thereafter while switching of his phone, he severed all relations with her. She contacted his family members who extended threats to upload her photographs with the petitioner and videos on social media and to defame her. She therefore, prayed for taking action against the petitioner. She was medically examined and was found to be pregnant. Her pregnancy was got aborted after seeking permission from the Court. Investigation proceedings have been initiated and are underway.

3. The instant petition has been filed on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. No case for commission of offence punishable under Section 376 of IPC had been made out against him as the provisions of offence of rape as defined under Section 375 of IPC are not attracted. The petitioner and the complainant are adult persons. It was a case of consensual relationship between two adult persons. The complainant had been emotionally exploiting the petitioner by representing that she was married person and her husband is living abroad, that she was suffering from lung cancer and had

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few days to live and further that she was in debt and had to clear the same. The petitioner being a good friend of the complainant, helped her financially. Subsequently, he had come to know that she was maintaining illicit relations with several boys by visiting with them to different hotels and used them to extract money from them. He had lastly met her in October 2023 when she had demanded more money from him on the pretext that she wanted to take divorce from her husband and to marry him and on refusal of the petitioner to do so, she had involved him falsely in this case. She had been voluntarily staying with the petitioner by visiting different places. There was neither any promise on the part of the petitioner to marry her nor there was any breach of such promise. The custodial interrogation of the petitioner is not required as he has already joined the same. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by respondent No.1-State. The petitioner had joined the investigation on 12.02.2024 in terms of order dated 01.02.2024 passed by this Court and it is stated by learned State counsel that even his medical examination has been conducted. Learned State counsel has submitted that since the allegations against the petitioner are serious in nature, therefore, he does not deserve to be given concession of anticipatory bail.

5. Learned counsel for the complainant, on the other hand, has argued that the petitioner had induced the complainant to maintain relationship with her by making a promise to marry her and had repeatedly ravished her and when she had become pregnant, then he had severed all ties with her and left her in a lurch. It is argued that the custodial interrogation of

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the petitioner is must for thorough investigation in the matter by the police. No extraordinary or exceptional circumstance for extending benefit of pre arrest bail is required to be given to him and, therefore, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record.

7. Both the parties have levelled allegations/counter allegations against each other with regard to the nature of their relationship. It is, however, not in dispute that at the time of lodging of the FIR, the complainant was pregnant. The petitioner has claimed that it was a case of consensual physical relationship between the parties and there was no promise to marry on his part and they were just good friends whereas according to the complainant, the petitioner had sexually exploited her by inducing her on the pretext of performing marriage with her. The petitioner had joined the investigation. However, his joining thereof alone cannot be stated to be a ground for extending benefit of pre arrest bail to him as a matter of right. It is well settled proposition of law that such benefit cannot be given to an accused merely because of his custodial interrogation might not be required. At this stage, it is neither feasible nor appropriate to draw any inference or to return any finding as to whether the complainant was repeatedly ravished at the hands of the petitioner on being induced by making a promise to marry and was under misconception of fact thereby amounting to vitiating of her consent or it was a case of consensual relationship. It is for the trial Court to give finding on this question on the basis of assessment and evaluation of the evidence which would be led by

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the parties during the trial. However, at this stage, it may be observed that there are serious allegations against the petitioner who is alleged to have impregnated the prosecutrix on the pretext of performing marriage with her and thereafter backed out. The powers under Section 438 of Cr.P.C. are not to be exercised in a routine manner but the well settled proposition of law is that they are to be exercised in extraordinary and sparing circumstances. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. Keeping in view the nature of the subject offence and the role attributed to the petitioner in commission of the same, the quantum of sentence which the conviction may entail and further the fact that no exceptional circumstance entitling the petitioner to seek concession of pre arrest bail has been made out, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

18.05.2024
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(MANISHA BATRA)
JUDGE

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