

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.6921 of 2023
Date of decision: 29.04.2024

Surinder Singh ... Petitioner

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Shantanu Bansal, Advocate,
for the petitioner.

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

Mr. Sanjay Jain, Advocate,
for the complainant.

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.0065 registered under Sections 292-A, 323, 329, 354-A, 376, 386, 503 and 506 of IPC and Sections 66, 66E and 67A of the Information Technology Act, 2008 at Police Station Barara, District Ambala.
2. Brief facts of the case relevant for the purpose of disposal of

the present petition are that the aforementioned FIR was lodged by the prosecutrix "T" (name withheld) against the petitioner on 28.04.2021 alleging therein that the petitioner by alluring her, had established physical relations with her against her wishes for four times while entering into her house and opening an attack upon her. She also alleged that he had even damaged her cell phone and prevented any communication of herself with her husband or other relatives, had taken her gold ornaments, Iphone 11 pro and cash amount of Rs.3 lacs apart from various clothing and household items. He had also been pressurizing her to deposit an amount of Rs.5 lacs in his bank account or otherwise threatening to make her pictures and videos viral on the internet. She also alleged that he had left for Spain but posted her nude pictures and videos on the internet and, therefore, she prayed for taking action against him. On the basis of her complaint and after registration of FIR, investigation proceedings have been initiated and the same are underway. The petitioner had moved an application for grant of anticipatory bail which was dismissed by the Court of learned Additional Sessions Judge, Ambala as on 25.11.2022.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact, there was discreet consensual relationship between the petitioner and the prosecutrix who is a married female having children. They were on talking terms with each other since the year 2018-19 through social media which culminated into love affair.

Now due to some misunderstanding, their relationship had gone wrong

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due to which she had implicated him falsely in this case. It is submitted by learned counsel for the petitioner that the allegations as to stealing money, gold articles and phone etc. of the prosecutrix from her house by the petitioner are totally false as no specific date, month and year when the petitioner had done so, has been mentioned in the FIR. It is argued that presently the petitioner has shifted to Spain. He is still ready to join the investigation. His custodial interrogation is not required. The allegations as levelled against him do not make out a case for committing offence of rape on the face of record and, therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State, as per which, there are specific and serious allegations against the petitioner. He indulged the prosecutrix into physical relationship and thereafter started posting her objectionable pictures and videos on facebook by creating multiple IDs and sending them to her relatives and friends. He was blackmailing the prosecutrix and wanted to extort money from her. It is also submitted by learned State counsel assisted by learned counsel for the complainant that the data containing Whatsapp messages received at the mobile phones of the victim and her relatives has been retrieved and it has been found that the source of the same is emanating from Spain wherein the petitioner is presently residing and working. It is argued that the petitioner has also committed offence of impersonating after hacking into the facebook account by creating fake facebook account and messenger account etc. and downloading objectionable pictures and

videos of the prosecutrix on the social media. The statements of certain witnesses have been recorded during the course of investigation which affirm this fact. Even a look out circular has been issued against him. Allegations against the petitioner are serious in nature. Therefore, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner and learned State counsel assisted by learned counsel for the complainant at considerable length and have gone through the record carefully.

6. On going through the allegations as levelled in the FIR as well as the pleas taken in the petition filed by the petitioner, it emerges that there was physical relationship between the petitioner and the prosecutrix previously. The petitioner has placed on record photocopies of some Whatsapp chat to show that they were in intimate relationship whereas according to the prosecutrix, the petitioner had forcibly maintained physical relations with her and thereafter started blackmailing her. The question as to whether it is a case of consensual relationship between the parties or of repeatedly ravishing of the prosecutrix by the petitioner is to be decided by the learned trial Court on the basis of the evidence produced before it and on thorough assessment and evaluation thereof and this Court while deciding an application for pre arrest bail, cannot go into that question. The status report reveals that some objectionable photographs and videos of the prosecutrix have been uploaded on the social media and the source of the same is found to be originating from Spain. The petitioner is admittedly staying there. He is alleged to have

created fake IDs and downloaded the pictures and videos of the prosecutrix with an intent to defame her. Keeping in view the allegations as levelled in the FIR, in my considered opinion, the custodial interrogation of the petitioner is required for proper and thorough investigation in the matter by the investigating agency. 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.

7. 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, 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.

29.04.2024
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(MANISHA BATRA)
JUDGE

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