

CRM-M-7586-2024 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-7586-2024
Date of decision: 4th April, 2024

Rajwinder Singh ...Petitioner(s)
Versus
State of Punjab ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shamlal Saha, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.
Mr. Vipul Aggarwal, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
9	14.01.2024	Ajnala, District Amritsar	376 of Indian Penal Code, 1860 (for short ‘IPC’) and Section 6 of POCSO Act, 2012

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by prosecutrix ‘S’ (name withheld) on 14.01.2024 alleging therein that she was married on 05.06.2022 but got divorced from her husband due to some differences with him and was living with her parents. She also stated that she had developed relationship with the present

petitioner who used to visit their house and who had assured to perform marriage with her. This fact was known to the parents of the petitioner also. She alleged that on being induced by the petitioner, she had left her home with him on 20.07.2023, they had gone to Amritsar and started staying in a rented room where sexual relationship developed between the petitioner and herself. She alleged that subsequently, she came to know that the petitioner was not going to perform marriage with her and on 19.09.2023, finding opportunity, she had run away from the place where she had been staying with the petitioner and had come back to her parental house. Her parents had talked with the parents of the petitioner qua solemnizing her marriage with the petitioner but they bluntly refused. After registration of FIR, investigation proceedings have been initiated and are going on. The present petitioner had filed an application for grant of pre-arrest bail before learned Additional Sessions Judge, Amritsar, which was dismissed vide order dated 31.01.2024 (Annexure P-10).

3. The present petition has been filed by the petitioner on the grounds and it has been argued by learned counsel for the petitioner that he has been falsely implicated in this case. The prosecutrix is major and a married female who though living separately from her husband was not having valid decree of divorce in her favour. Infact, it was she who had been entrapping innocent persons in her net in connivance with her mother and had been lodging false complaints and this complaint had also been filed by her against the petitioner to extort money from him. Previously, she had

entrapped one Manpreet Singh who had committed suicide and even a complaint was lodged against the family members of the prosecutrix in this regard. It is also submitted that the prosecutrix had solemnized marriage with one Harinder Singh on 05.06.2022, wherein she had recorded her date of birth as 22.07.2004 i.e. 19 years, though now she was wrongly claiming herself to be 17 years old. An FIR bearing No. 37 dated 22.02.2023 was got registered by her mother making allegations of the prosecutrix having been kidnapped by one Yodha Singh. Subsequently, by extracting money, her mother had recorded a statement that abovesaid Yodha Singh had no role in enticing away her daughter and she had no objection if the said Yodha Singh was declared innocent. It is submitted that now she had performed marriage with one Gurpal Singh and in her Aadhar Card, she had mentioned her date of birth as 25.02.2003 which also showed that she was major on the date of alleged occurrence. Custodial interrogation of the petitioner is not required. He is ready to join investigation. The allegations as levelled in the FIR do not make out any case for commission of offence punishable under Section 376 of IPC or Section 6 of POCSO Act as against him and this FIR has been lodged with a view to extract money from him. Therefore, it is submitted that the petition deserves to be allowed.

4. Status report is filed by respondent-State and reply has been filed by complainant alleging that there are serious allegations against the petitioner and his custodial interrogation is required for proper investigation of the matter.

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

6. The petitioner is alleged to have enticed away the prosecutrix on the pretext of performing marriage with her and is further alleged to have ravished her. The prosecutrix has claimed herself to be 17 years old at the time of occurrence i.e. on 20.07.2023. It is not the claim of the petitioner that they were in any relationship or victim had voluntarily accompanied her and had willingly developed consensual relationship with her. The whole thrust of arguments raised by learned counsel for the petitioner was that the prosecutrix and her mother were involved in the acts of entrapping innocent persons and thereafter extracting money from them by lodging false complaints against them. The petitioner has also placed on record copy of FIR bearing No. 37 of 20.02.2023 got registered by the mother of the prosecutrix levelling allegations of the latter being kidnapped by one Yodha Singh. Learned counsel for the petitioner has also drawn the attention of this Court to Annexure P-4 which is copy of extract of Anand Karj register showing the factum of performance of marriage of the prosecutrix with one Harinder Singh on 05.06.2022 and in this document, the date of birth of the petitioner is mentioned as 22.07.2004 and it is on the basis of this document that it is claimed that the prosecutrix was major at the time when she performed her marriage with Harinder Singh qua whom she was claiming to have got panchayati divorce and as such, on 20.07.2023, she could not be

assumed to be a minor. The well settled proposition of law is that at the time of considering a plea for grant of bail, the Court is required to consider the nature and gravity of the allegations against the petitioner, the severity of the punishment, the fact that whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, reasonable apprehension of witnesses being tampered with and danger of justice being thwarting by grant of bail. This Court while considering the plea of the petitioner for pre-arrest bail cannot draw any conclusion or return any finding as to whether the victim was a minor or major at the time of the occurrence. This is also not the stage where this Court can decide that she had voluntarily gone with the petitioner, as such a finding has to be given on a thorough assessment and evaluation of evidence to be led by the parties at the trial. The fact that the mother of the prosecutrix had lodged a similar complaint as against one more person prior to lodging of this FIR against the present petitioner cannot be taken into consideration, at this stage, as ground for grant of pre-arrest bail of the petitioner. It is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. However, no such circumstance has been made out in this case. More so, it is equally well settled proposition of law that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information. The Court is required 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.

7. Keeping in view the nature of allegations, which have been levelled against the petitioner, the acts attributed to the petitioner and attendant facts and circumstances, I am of the considered opinion that no ground hamms been made out for extending benefit of pre-arrest bail to the petitioner. Hence, the petition 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.
9. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

4th April, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |