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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.8348 of 2024
Date of decision: 31.05.2024

Shashwat Katyal ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rahul Deswal, Advocate,
for the petitioner.

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

Mr. Jitender K.Goel, Advocate,
for respondent No.2.

MANISHA BATRA, J.

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.426 dated 21.10.2023, registered under Sections 376 (2) (n), 328 and 120-B of IPC (Section 120-B of IPC has been deleted) at Police Station Khedki Daula, District Gurugram, Haryana.
2. The instant petition has been filed by the petitioner on the grounds and it has been argued by learned counsel for the petitioner that the prosecutrix is junior to the petitioner in an institute where he is final year student of Bachelors of Arts in Culinary Art. She showed interest in

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him but as the petitioner was already in relationship, therefore, he had disclosed about this fact to her. The prosecutrix with an intent to take revenge from him, had entrapped her. She herself had come to his house on the evening of 16.09.2023 immediately after making a call to him. He shares flat with two persons namely, Munira Kumari and Shivam Deep. At the time of her visit, the prosecutrix had bought a bottle of Vodka and had forced the petitioner to have it. The petitioner had just taken two shots only as he wanted to take rest as he had a hectic day. One Vedika had also visited them on the same evening. When the petitioner along with flatmates had gone outside to see Vedika off and came after around five minutes, he found that the prosecutrix had consumed the entire bottle of Vodka. She had started showing her affection towards the petitioner. She passed out due to excessive drinking. The petitioner had even tried to contact his mother but could not unlock her phone. Later on, on receipt of call from her mother, he had told her about the entire situation and had even sent a photograph of the prosecutrix showing her while sleeping there. The petitioner and his friends had stayed in the drawing room whereas the prosecutrix had slept in his room. She woke up in the morning and had gone to her hostel through auto rickshaw. During this period, the mother of the prosecutrix had even talked with Munira Kumar who is his flatmate. She had even sent a thanks message to Munira Kumari. Thereafter, the petitioner and the prosecutrix had been regularly attending their college. It was only on 03.10.2023, that the petitioner was contacted by one friend of the prosecutrix namely, “AV” (name

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withheld) informing him that the prosecutrix was not able to accept petitioner's feeling for some other girl and she could go to any extent to have relationship with him. She had also suggested to him that he could write an apology letter to the prosecutrix. Acting as per guidance of friend of the prosecutrix, he had written a message through Whatsapp to the prosecutrix and thereafter, she had falsely involved him in this case to wreak vengeance after a gap of 35 days.

3. Apprehending his arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Gurugram which had been dismissed vide order dated 31.01.2024.

4. It is argued that the petitioner had never committed any rape upon the prosecutrix and has been falsely implicated in this case. Learned counsel for the petitioner has drawn the attention of this Court to Annexure P-3 which is copy of Whatsapp chat which had taken place between the mother of the prosecutrix and himself while arguing that the petitioner had rather taken care of the prosecutrix while she had passed out and sent her photographs to her mother. He has also placed on record the Whatsapp chat which has taken place between the friend of the prosecutrix and himself. It is submitted that the petitioner has already joined the investigation. His custodial interrogation is no more required. He is a young person. His entire career is at stake due to the false complaint lodged by the prosecutrix. There is no medical evidence on record to connect the petitioner with the act of committing rape upon the

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prosecutrix. With these broad submissions, it is urged that he deserves to be extended benefit of pre arrest bail.

5. Reply has been filed by the respondent-State. It is submitted therein and it has been argued by learned State counsel assisted by learned counsel for respondent No.2 prosecutrix that there are serious allegations against the petitioner. He has suffered disclosure statement admitting his involvement in the crime of committing rape upon the prosecutrix repeatedly on the intervening night of 16/17.09.2023. He has not got recovered the mobile phone which was allegedly used by him on the fateful night and has caused disappearance of evidence of the offence. He has not cooperated with the investigating agency during interrogation. His custodial interrogation is still required for conducting thorough investigation in the matter. Annexure P-6 which is the Whatsapp chat relied by himself shows that on 04.10.2023, he felt sorry for the act which he had committed with the prosecutrix. Therefore, it is argued that the petition does not deserve to be allowed.

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

7. The case of the prosecution is that on the intervening night of 16/17.09.2023, the petitioner had called the prosecutrix at his apartment and after making her consume some drink mixed with some intoxicating substance and making her semiconscious, he had repeatedly committed rape upon the prosecutrix on the said night while pretending to her mother that she had passed out due to her drinking and that she had been

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properly taken care of by him and further that his flatmate Munira Kumari was also present and the prosecutrix was safe. Whereas, the case of the petitioner is that the prosecutrix was showing interest to have a relationship with him and as he had denied the same, she had become jealous and in retaliation and to destroy his career and life, she had hatched a plan and in pursuance thereof, came to his house at her own on the fateful night. She herself had bought a Vodka bottle and consumed the same in excess and thereafter passed out. She did not lodge any complaint with the police for a period of 35 days and during the intervening period, he was being pressurized to enter into relationship with her and/or to face dire consequences. The petitioner has joined the investigation in this case. However, the mobile which was claimed to have been used by him as on the night of occurrence has not been got recovered by him despite the fact that he has joined the investigation twice in pursuance of the orders passed by this Court. The veracity of Whatsapp chats, copies of which have been placed on record by him as Annexures P-2 to P-6 would be assessed by the learned trial Court on the basis of the evidence to be produced before it during trial and the same cannot be tested at this stage. The allegations against the petitioner are quite serious in nature. Simply because of the fact that he has joined the investigation, no indefeasible right has been created in his favour to be extended benefit of pre arrest bail. In my considered opinion, thorough investigation is still required to be conducted in the matter and for that purpose, the custodial interrogation of the petitioner is a must. More so,

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even if it is presumed that custodial interrogation is not required, still, that does not make him entitled to have benefit of pre arrest bail. Reference in this regard can be had to **Sumitha Pradeep v. Arun Kumar C.K. and another**, 2022 (4) R.C.R. (Criminal) 977.

8. More so, it is well settled proposition of law that the benefit of pre arrest bail is to be given in extraordinary, sparing and exceptional circumstances but no such circumstance has been made out in this case. As such, in view of the discussion as made above but without meaning to make any comment on the merits of the case, I am inclined to hold that the order dated 16.02.2024 regarding grant of interim bail as granted to the petitioner does not deserve to be become absolute and the petition does not deserve to be allowed. Accordingly, the same is dismissed.

31.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No