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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9343-2023
Date of decision: 13.03.2024

GAURAV KHANNAPetitioner

versus

STATE OF UT CHANDIGARHRespondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Mohit Giri, Advocate &
Ms. Gauri Kaushal, Advocate
for the petitioner(s).

Mr. Manish Bansal, PP UT, Chandigarh &
Mr. Navjit Singh, Advocate UT Chandigarh

Mr. Amit Kaith, Advocate
For the complainant.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No.7 dated 30.01.2023 under Sections 376(2)(m)(n), 452, 324, 342, 307, 354-D, 201, 506 IPC and Sections 25/54/59 Arms Act and Sections 66-A, 66-E of IT Act registered at Police Station Sector 49, Chandigarh.
2. Counsel for the petitioner submits that the petitioner was granted interim bail as per the order dated 22.02.2023 passed by the co-ordinate Bench of this Court.

The relevant portion of the aforesaid said order reads as under:-

XXXX XXXX XXXX XXXX

“The present FIR has been lodged in pursuance to the order dated 18.01.2023 passed by the Judicial Magistrate First Class, Chandigarh (Annexure P-4) solely on the ground that despite the complainant having lodged the information with the police and which the police was required to

register an FIR and carry out the investigation, but they did not do so, which led to the filing of application under Section 156(3) of Cr.P.C.

Learned Senior counsel for the petitioner submits that the entire allegations leveled in the FIR are concocted and born out of the fact that the parties were in consensual relationship and it is only on account of the financial transactions, when the petitioner sought the return of Rs.5 lacs given to the complainant, then the present FIR was lodged. He further submits that, in fact, that was also not the point of trigger and the actual point of trigger was that since the complainant was a married lady, she probably got caught, but de hors the same, there is no such averments or action taken by the husband of the complainant, either against the complainant or against the petitioner, therefore, the same issue does not needs any comment.

Notice of motion.

Mr. Anupam Bansal, Addl. PP for Mr. A.M. Punchhi, PP for UT, Chandigarh, accepts notice on behalf of the State and Mr. Amit Kaith, Advocate has put in appearance on behalf of the complainant and has vehemently argued and opposed the bail application by submitting that the serious allegations have been leveled against the petitioner.

Learned counsel for the complainant has further submitted that the delay in lodging FIR was caused as police did not take prompt action on her complaint, which was filed before SSP, Chandigarh.

Learned counsel for the State has also submitted that recovery of weapon as alleged in complaint has to be effected, therefore, custodial interrogation of the petitioner is required.

After hearing counsel for the parties, learned counsel for the complainant was called upon to go through the chats between the petitioner and the complainant attached as Annexures P-5 and P-7, which is running into more than 100 pages, where the complainant had never shown any remorse or claimed the explicit photographs etc. After going through the same, it is apparent that parties were in a consensual relationship and since the police did not investigate the matter at proper time, which could have brought the truth out, the life and liberty of the petitioner, cannot be put at stake. The petitioner is a married man and as per the contents of the complainant herself, the petitioner is the father of a special child. It has also been submitted by the learned counsel for the petitioner that he is also looking after his old mother after separation of his wife.

Moreso, it is a settled proposition of law that where a complainant had been willingly developing a consensual relationship and subsequently, the relationship does not work out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(m)(n) of IPC as held in the judgment passed by Hon'ble Supreme Court of India in case titled as "Ansaar Mohammad v. State of Rajasthan", 2022 (3) RCR (Criminal) 917.

the Without commenting on the merits, petitioner shall join investigation on 02.03.2023 at 10:00 A.M. before the Investigating Officer and cooperate with the Investigating Agency even thereafter

In the event of arrest, the petitioner be released on interim bail subject to furnishing personal/surety bonds to the satisfaction of the Arresting Investigating Officer and the petitioner shall abide by the conditions as envisaged under Section 438 (2) Cr.P.C.

Adjourned to 26.04.2023.

It is a strange case where the complainant approached the police authorities, but no explanation is coming forth as to why the concerned police official did not take the required action as envisaged under law, which would have clarified the entire position, as the presumption is that the police would have thoroughly investigated the matter and brought the truth out. Therefore, let the SSP, Chandigarh file an affidavit after looking into as to who was the concerned official and what was the reason for his not taking the action at that time under law."

3. Counsel for the petitioner further submits that the petitioner has joined the investigation in compliance of the aforesaid order dated 22.02.2023 passed by the co-ordinate Bench of this Court.

4. Learned counsel appearing on behalf of the respondent-State on instructions from ASI Subash, confirms that the petitioner has joined investigation and also contends that his further custodial interrogation is not required. He submits that challan under Section 173 Cr.P.C. has been presented and case has been committed to the Court of Sessions as per Commitment Order dated 18.09.2023.

5. In view of the reasons recorded in the order dated 22.02.2023 and keeping in view the fact that the petitioner has joined investigation, his further custodial interrogation is not required by the Investigating Agency, the present petition is allowed and the order dated 22.02.2023 passed by the co-ordinate Bench of this Court, granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

6. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

7. Liberty is reserved in favour of the State/complainant to move for cancellation/recall of the order in case the petitioner violates any condition stipulated under Section 438 (2) Cr.P.C., or upon showing any other sufficient cause.

(HARPREET KAUR JEEWAN)
JUDGE

13.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No