

CRM-M-11388-2022
Date of decision: 16th April, 2024

...Petitioner(s)

...Respondent(s)

Mr. Baljeet Beniwal, Advocate for the complainant.

seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
233	16.12.2021	Women, Police Station Ballabgarh, District Faridabad	376(2)(n), 323 and 506 of Indian Penal Code, 1860 (for short 'IPC')

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was lodged on the basis of written complaint filed by the prosecutrix 'N' (name withheld) who is forty years old alleging therein that she was a divorcee and was posted as a constable in CISF. She came into the contact with the petitioner through social media and subsequently, on asking of the petitioner, they had started

living in live-in relationship. Physical relations had also been developed between them. Subsequently, she came to know that the petitioner was having relations with other females as well due to which quarrels had started taking place between them. She further alleged that on 28.11.2021, the petitioner came to her house in an inebriated condition at about 2:30 AM and had forcibly committed rape upon her while extending threats to her. Investigation is under way, after registration of FIR. The prosecutrix had refused to get her medical examination conducted. The petitioner had filed two applications for pre-arrest bail before the concerned Sessions Court but the same have been dismissed.

3. Learned counsel for the petitioner, in addition to the grounds mentioned in the petition, has submitted that the petitioner has been falsely implicated in this case. Infact, it is a case of honey trapping of the petitioner by the prosecutrix and then of consensual relationship between two consenting adults. The prosecutrix had mis-represented herself as a divorcee though her marriage was still subsisting at the time when the relations developed between the parties. She had extracted an amount of Rs.11,00,000/- from the petitioner by emotionally as well as financially exploiting him and had falsely implicated him in this case due to the reason that the demand of another sum of Rs. 20,00,000/- as made by the prosecutrix had not been accepted by the petitioner. It is further submitted that the petitioner is also a police official. There is no likelihood of his absconding. He has no criminal antecedents. There is no likelihood of his tampering with the evidence. He is ready to join the investigation. His

custodial interrogation is not required. Incarceration in jail would bring social disrepute and personal hardship to him. The prosecutrix is habitual of filing such like cases against other persons also. The prosecutrix did not get herself medically examined. There is delay in lodging of the FIR without any plausible explanation which substantiates false allegations. With these broad submissions, it is urged that he may be extended benefit of pre-arrest bail.

4. *Per contra*, learned State counsel for respondent No.1 assisted by learned counsel for respondent No.2- prosecution has opposed the prayer made by the petitioner on the ground of gravity of the offence.

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

6. It is not in dispute that there was consensual relationship between the parties and the same has turned sour. As per the submission made by the petitioner, the prosecutrix has lodged similar FIRs against other persons as well. This allegation finds support from the supplementary report as filed by the respondent-State which shows that a case bearing FIR No. 175 dated 04.04.2016 had been registered at Police Station Sun Light Colony, Delhi under Section 376 of IPC against one Virender Kumar on the complaint filed by respondent No.2. Apart from that, copy of FIR bearing No. 198 dated 17.03.2021 has also been placed on record which shows that she got registered a case under Section 8 of POCSO Act read with Section 354-A, 147, 149 and 323 of IPC against some persons at Police Station Sector 7, Faridabad which is pending.

7. As per the allegations, it is not in dispute that the parties were living in live-in relationship from December, 2019 till November, 2021. The allegations in the FIR themselves show that the relationship between the petitioner and the prosecutrix who are two adult persons was purely consensual. The plea taken by the petitioner that he had been honey-trapped by the prosecutrix with an intention to extract money from him, has to be proved on the basis of evidence to be produced at the trial. The only instance of her being forcibly subjected to the act of sexual inter course by the petitioner as quoted by the prosecutrix herself is about the incident which had allegedly taken place on 28.11.2021. There is however, delay of 18 days in reporting the matter to the police. The prosecutrix also did not get herself medico legally examined. There is no whisper in the FIR that the petitioner at any stage had made any promise to marry the prosecutrix. The live-in-relationship between the parties was not working out now. This is also not a case where the consent of the prosecutrix was forcible or was with misconception by making any false promise as contents of the FIR itself show that it was comprehensible to the prosecutrix that there was going to be no marriage. The petitioner has since joined the investigation in pursuance of interim order passed by this Court and it is not made out that his custodial interrogation is required. The prosecutrix is also shown to have lodged another case of similar nature bearing FIR No. 175 dated 04.04.2016 at Police Station Sun Light, Delhi previously. Taking all the circumstances into consideration but without meaning to make any comment on the merits of the case, lest the same prejudice the trial Court or the case of the parties, I

am of the considered opinion that it is a fit case for exercising powers under Section 438 of Cr.P.C. and extending benefit of pre-arrest bail to the petitioner. Therefore, the petition is allowed and the order dated 26.02.2024 is made absolute subject to compliance of following conditions by the petitioner:-

- (i) He shall appear before the Investigating Officer as and when required.
- (ii) He will not make any contact with the prosecutrix or other material witnesses.
- (iii) He will not tamper with the evidence or intimidate the witnesses.
- (iv) He will not leave the country without permission of the trial Court.

8. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

16th April, 2024

Parveen Sharma

[MANISHA BATRA]

JUDGE

1. Whether speaking/ reasoned

2. Whether reportable

:

:

Yes

Yes