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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.11645 of 2024
Date of decision: 21.05.2024

Poonam Kumari ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sidhant Vermani Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

Mr. Raju Arora, Advocate,
for the complainant.

MANISHA BATRA, J.(Oral)

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.14 dated 30.10.2023, registered under Sections 376, 420, 467, 468, 471 and 120-B of IPC at Police Station Punjab State Crime Police Station, SAS Nagar, Punjab.

2. Vide order dated 05.03.2024 passed by this Court, the petitioner was released on interim bail and was directed to join

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investigation. Order dated 05.03.2024 passed by this Court reads as under:-

“The present petition has been filed by the petitioner under Section 438 of Cr.P.C. for grant of anticipatory bail in FIR No. 14 dated 30.10.2023, registered under Sections 376, 420, 467, 468, 471 and 120-B of the IPC at Punjab State Crime Police Station, SAS Nagar.

The aforesaid FIR has been registered on the basis of a written complaint filed by complainant/victim ‘D’ (name withheld) alleging therein that she had given an advertisement in the Punjabi newspaper Ajit for her matrimonial alliance on 21.03.2021. The petitioner along with her family members had responded to the said advertisement. The petitioner along with her son Ishan Kumar and other family members visited her house and had given consent for marrying accused Ishan Kumar with her. Roka ceremony was performed at Ludhiana on 11.04.2021. Just two days thereafter, accused Ishan Kumar had called the father of the complainant with a proposal that they would settle in Australia, to which, her father had agreed. She alleged that on 16.04.2021, by representing that some wedding photographs of the complainant and accused Ishan Kumar would be required for the purpose of applying for couple Visa for Australia, the petitioner along with her family members and some other relatives persuaded the family of the complainant to get some photographs collected for the purpose. When the family of the complainant questioned the accused for fixing some date for wedding of the complainant with accused Ishan Kumar, they represented that since the sister of Ishan Kumar was in Australia and would come to India only after 4-5 months, therefore, they would get their marriage performed at that time. She alleged that on 20.04.2021, the accused persons had called the complainant and her family members to reach the office of Marriage Registrar, Amritsar to complete certain formalities, which was so done. She alleged that thereafter, accused Ishan Kumar and herself had

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started meeting each other. By making a promise to marry her, he took her to hotel rooms and forcibly subjected her to acts of sexual intercourse on 30.09.2021, 01.12.2021 and 28.03.2022. On 15.04.2022, he called her to Amritsar by representing that her mother, who had gone to Australia on 06.04.2022, had come back. The complainant went to his house alone but his mother, i.e. the present petitioner, was not present there and despite the presence of co-accused Sunil Kumar, who is his father, he made physical relation with her in his house. Out of fear, she did not disclose anything to her parents.

It was further alleged by the complainant that an amount of Rs. 10 Lakhs had been deposited by the sister and father of the complainant in cash in her bank account for the purpose of going to Australia, some money was required to be shown in her bank account. She alleged that accused persons had taken her original Passport, PAN Card, Aadhar Card, educational certificates, birth certificate, ITRs of three years, two blank signed cheques of her father and sister with them on the pretext of completing formalities for securing Visa. In August, 2022, accused Ishan Kumar and his family members informed that the date of their marriage was fixed for 05.09.2022. On 24.08.2022, the complainant received a message on her mobile phone that the amount of Rs. 10 Lakhs, which was deposited in her bank account, had been transferred in the name of father of Ishan Kumar. When she asked Ishan Kumar about this fact, instead of explaining the same, all the accused persons started extending threats to complainant and her family members. She came to know that by forging her signatures, the accused persons had withdrawn the aforesaid amount from her bank account. Accused persons also threatened to upload her photographs and videos on the internet and only then, the complainant and her family members came to know that they had been cheated at the hands of accused persons. After lodging of the FIR, investigation proceedings were initiated and the same are going on.

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The present petition has been filed by the petitioner, who is mother of accused Ishan Kumar, on the grounds and it has been argued by her counsel that she has been falsely implicated in this case. While admitting that the marriage of her son had been fixed with the victim through a matrimonial advertisement, she alleged that the marriage ceremony had taken place. In fact, the complainant and her family members were looking for a groom, who would settle her abroad and could bear entire expenses of settling her there. Marriage between accused Ishan Kumar and the complainant was performed on 16.04.2021 and was duly registered. They had started cohabiting together as husband and wife. Both of them had applied for Visa to go abroad. The date of their marriage was got entered into before record of the authorities as 25.10.2020, so that necessary Visa formalities could be complied with. The complainant and accused Ishan Kumar had got their marriage registered willingly and voluntarily.

Learned counsel for the petitioner has argued that unfortunately, the Visa of the complainant was declined by the Australian Government and thereafter, the son of the petitioner and complainant had applied for Visa of United Kingdom and the complainant had even got a conditional offer letter from the University of Central Lancashire, which she even accepted and fees for the same was deposited by her. Both, the complainant and Ishan Kumar, were supposed to go to UK and while the formalities for the same were going on, the complainant on interference of her family members and a friend, who was living in Canada, started causing trouble by refusing to go to UK and stated that she would only go to Canada. It is submitted that when accused Ishan Kumar did not agree to this unjustified demand of the complainant and then she extended threat to give divorce to him and even filed a complaint against the petitioner and her family members. The said complaint was thoroughly inquired into by the police and was found to be false. In the meanwhile, the brother of the complainant had

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committed suicide and the son of the petitioner was falsely implicated in that case. It is submitted that the petitioner has been falsely booked for commission of aforementioned offences, though no case for commission of the same has been made out. Her custodial interrogation is not required. She is ready to join the investigation. She has neither committed any offence of cheating with the victim or her family members nor there was any allegation that she had conspired with accused Ishan Kumar in committing offence of rape by him upon the victim. Rather, once the marriage of the victim with her son had been duly registered, therefore, there was no question of offence of any rape having been committed even by accused Ishan Kumar upon the victim.

Notice of motion.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab, who has already received a copy of the petition in advance, seeks some time to file the status report.

At this stage, Mr. Raju Arora, Advocate, has put in appearance on behalf of the complainant and has filed his Vakalatnama. He has vehemently argued that the petitioner had entered into a criminal conspiracy to cheat and defraud the complainant and her family members and in pursuance of that criminal conspiracy, marriage was shown to have been performed between the complainant/victim and accused Ishan Kumar, though in fact no marriage ceremony had taken place between them and the complainant had even never got the same registered. Without performing marriage with the complainant, accused Ishan Kumar had repeatedly ravished her. The allegations against the petitioner are equally serious and, therefore, it is argued that she does not deserve to be given the concession of pre-arrest bail.

List again on 29.04.2024.

In the meantime, the petitioner is directed to appear before the Investigating/Arresting Officer to join investigation within one week or as and when subsequently required thereafter. In

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the event of her arrest, the Investigating/Arresting Officer shall release the petitioner on ad-interim bail subject to her satisfaction. The petitioner shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C.”

3. Status report has been filed by the respondent No.1-State and the same is taken on record. As per status report, the petitioner has joined the investigation as on 11.03.2024. Learned State counsel assisted by learned counsel for the complainant has argued that the custodial interrogation of the petitioner is necessary for recovery of a sum of Rs.8 lacs which was transferred to the account of husband of the petitioner for sending the complainant abroad. That apart, educational qualification certificates, passport, aadhar card, PAN card, birth certificate, some blank cheques pertaining to bank account of father and sister of the complainant and income tax returns of the complainant are to be recovered from the petitioner for which her custodial interrogation is required. It is also argued that the petitioner has not fully cooperated with the investigation for getting effected the recovery of the aforementioned documents and, therefore, it is urged that the petition does not deserve to be allowed.

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

5. The petitioner in connivance with her family members is alleged to have cheated the complainant and her family members on the pretext of performing marriage of her son with the complainant and further on the allegations that without getting the marriage ceremonies

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performed actually, they had got clicked some photographs of the complainant and the co-accused Ishan Kumar by representing that these photographs will be used for the purpose of getting the marriage registered. She along with the co-accused is also alleged to have extracted huge amount of money from the family of the complainant on the ground of getting the complainant settled along with the co-accused Ishan Kumar in Australia and is further alleged to have committed the offence of forgery and use of forged documents.

6. As per the allegations, no marriage ceremony had infact taken place and the marriage had also not been registered. The petitioner, however, has placed on record some photographs showing the marriage ceremony being performed between her son and the complainant and copy of a certificate of registration of the marriage of the son of the petitioner with the complainant.

7. So far as the allegation that the custodial interrogation of the petitioner is required for effecting the recovery of an amount of Rs.8 lacs is concerned, as per the case of the prosecution itself, the said amount had been transferred to the account of husband of the petitioner and not the petitioner and, therefore, there can be no question of her getting the same recovered. Then with regard to allegation of non-recovery of educational certificate, passport, aadhar card and PAN card etc. of the complainant at the instance of the petitioner, since there is denial by the petitioner qua her being in custody thereof, and as it will be only be on

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the basis of evidence to be produced on record, that a conclusion can be arrived at as to whether such documents were in custody of the petitioner and it was she who is liable to get the same recovered, in my considered opinion, the detention of the petitioner in custody for such purpose would have no meaning. Keeping in view the discussion as made above but without meaning to make any comment on the merits of the case, the petition is allowed and the order dated 05.03.2024 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure.

21.05.2024
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(MANISHA BATRA)
JUDGE

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