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204 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17916-2022
Date of decision: 4th March, 2024

Dinesh Kumar ...Petitioner(s)
Versus
State of Haryana ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. A.S. Nirmaan, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

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.	Dated	Police Station	Sections
337	03.12.2020	Krishna Gate, Thanesar, District Kurukshetra, Haryana	376 of Indian Penal Code, 1860 and Section 67 of Information Technology Act

2. It is alleged in the FIR that the prosecutrix had separated from her husband about 7-8 years back by way of a Panchayati decision and had been living with her mother and thirteen years old daughter. She came into contact with the petitioner about 6-7 years' back who physically exploited her on the false pretext of marriage. He used to work as a pujari at differences places and used to call her there. However, from last some time, he had stopped taking her calls. She waited for him for nine months but he did not respond to her calls and rather started sending threatening messages. She alleged that now he had created some fake ID's by using different phone

numbers and was trying to defame her. A case under Section 376 of IPC and Section 67 of IT Act was initially registered. Investigation is going on. The arrest of the petitioner had been ordered to be stayed after filing of this petition and vide order dated 13.10.2023, he was directed to join the investigation.

3. The instant petition has been filed by the petitioner submitting therein that he has been falsely implicated in this case. The complainant is about ten years older than him. She had stayed with the petitioner to different places out of her own will and the relationship between them was consensual. The complainant is a married lady living separately from her husband. She has not been legally divorced and therefore, there was no question of the petitioner giving any promise to marry with her. He has already joined the investigation. It is infact, the complainant herself in the habit of lodging false FIRs in order to extract money from innocent persons. His custodial interrogation is not required. His detention would not serve any purpose. Therefore, it is argued that the petition filed by him deserves to be allowed.

4. It is also submitted by the petitioner that even in her statement recorded under Section 164 of Cr.P.C., it has been admitted by the complainant that she had been visiting the places wherever the petitioner worked, out of her own will. It is also submitted that the petitioner has since got married. The complainant had a conversation with his wife wherein she raised demand of money and a pen-drive of the said conversation which had been recorded has already been handed over to the investigating agency.

5. On the other hand, learned State counsel has opposed the prayer made by the petitioner for grant of anticipatory bail by submitting that by taking advantage of the condition of the prosecutrix, on the false pretext of marriage, the petitioner physically exploited her and committed rape with her and as such he is not entitled for anticipatory bail. In reply by way of an affidavit, as submitted by learned State counsel, it is however, admitted that the conversation between the complainant and wife of the accused had been recorded and the translated version of that conversation has been annexed with the reply dated 27.09.2022, wherein the complainant is shown to be demanding a price for her respect and is also saying that she would not like to perform marriage with the present petitioner.

6. It is apparent from the record that the relationship between the parties was purely consensual. The complainant might be living separately from her husband but it is her own version that it was only a Panchayati divorce with him and she had no valid decree of divorce in her favour. It is to be assumed that the marriage between the complainant and her husband existed and therefore, there could be no promise of marriage on the part of the petitioner and acceptance of the same on the behalf of the complainant. *Prima facie*, the ingredients required for commission of offence punishable under Section 376 of IPC are not mad out. In this context, this Court places reliance upon authorities cited as '*Shambhu Karvar vs. State of UP and another, AIR, 2022, Supreme Court 3901, 'Parmod Suryabhan Vs. State of Uttar Pradesh, Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another, (2021) SCC Online SC 181*', wherein the relationship between

two major persons of opposite sex being consensual, benefit of anticipatory was given to the accused. Reliance can also be placed upon '*Ansaar Mohammad Vs. State of Rajasthan and another 2022, SCC online SC86*', wherein in similar matter, anticipatory bail was granted to the petitioner by the Hon'ble Supreme Court. The Hon'ble Apex Court in '*Susheela Aggarwal and others Vs. (NCT of Delhi and another) (2020) 5 SCC 1*' had held that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing from justice, such as leaving the country etc. It has further been held that Courts ought to be generally guided by considerations such as nature and gravity of the offences, the role attributed to the applicant and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

7. Considering the above discussed settled principles of law regarding anticipatory bail, submissions made by learned counsel for the parties, the nature of the accusations and the fact that the complainant while claiming that she was having physical relations with the petitioner from the last six-seven years, lodged FIR only a gap of that much period, the role of the applicant and all attendant facts and circumstances of the case but without expressing any opinion on the merits of the case, in view of this Court, it is fit case to grant of anticipatory bail till the conclusion of the trial in the matter. Accordingly the petition is allowed and the order dated

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13.10.2023 is made absolute. It is directed that the petitioner shall join the investigation by appearing before the Investigating Officer within a period of fifteen days and in the event of his arrest, he shall be released on bail on his furnishing personal bonds of rupees two lakhs with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

- i) The petitioner shall not directly or indirectly make any inducement threat or promise to acquaint with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with evidence.
- ii) He shall not pressurize/intimidate the prosecution witnesses.
- iii) He shall not commit an offence similar to the offence of which he is accused or suspected of the commission of which he is suspected.
- iv) He shall not leave India without prior permission of the Court.

8. In case of breach of any of the above conditions, the Investigation Officer, shall be at liberty to file appropriate application for cancellation of bail of the petitioner in accordance with law.

[MANISHA BATRA]
JUDGE

4th March, 2024

Parveen Sharma

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