

282 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-24183-2023
Date of decision: 23rd May, 2024

Gurdeep Singh @ Dimple

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Anil Kumar Garg, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.
Mr. G.S. Verma, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
392	29.09.2022	Division No. 7, District Police Commissionerate, Ludhiana	376 of IPC, 1860 and Section 67 of Information Technology Act, 2000 (for short 'IT Act')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant 'S' (name withheld) alleging therein that she had been working in a private factory at Ludhiana from the last about one and half years and did work of checking and packing, whereas the



present petitioner who had also been working there used to do machine repair work. He procured her cell-phone number from someone and started making calls to her, thereby telling her that he wanted to be friends with her. On his repeated insistence, she had gone to meet him. He took her to a hotel at Sector 32, Chandigarh road, Ludhiana, wherein he offered a cold-drink to her, upon consuming which, she became unconscious and on re-gaining consciousness, she found herself to be lying in a naked condition. She alleged that the petitioner had committed rape upon her and then extended threats to her not to disclose the incident to anybody, as he had made her videos and would make them viral otherwise. Out of fear, she remained quiet. Taking advantage of this fact, the petitioner kept on exploiting her sexually by taking her to different hotels on different dates for a period of about one and half years. On 14.07.2022, also he took her to a room of some hotel and had sexually assaulted her. He even started insisting her to develop physical relations with his friends and on her refusal, he clicked her obscene photographs and made them viral on different apps of social media. After registration of FIR, investigation proceedings have been initiated. The prosecutrix had been medico legal examined. Her statement under Section 164 of Cr.P.C. was recorded. The investigation is under way.

3. The petitioner had moved an application for grant of pre-arrest bail before the Court of learned Additional Sessions Judge, Ludhiana which was dismissed, vide order dated 23.03.2023.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he been falsely implicated



in this case by the prosecutrix though it was clear cut case of consensual physical relationship between them and they had even decided to get married. The prosecutrix was got introduced by him to his family members. This fact was clearly reflected from the photographs placed on record by him. Infact, it was the prosecutrix who had no plans to marry him and entered into relationship with him only with an intention to extract money and when the demand of a sum of Rs.2 lacs as raised by her had not been fulfilled by the petitioner, then, he was implicated by her in this case. Contradictory allegations with regard to capturing objectionable pictures and videos and qua making the same viral, had been levelled in the FIR which could not be believed. He has already joined the investigation on 26.05.2023 and 07.03.2024. His custodial interrogation is no more required. He has been wrongly declared as a proclaimed person by the trial Court during the pendency of this petition though the fact that he had moved this application on 10.05.2023 which was very much within the knowledge of the investigating agency and, therefore, the order declaring him as a proclaimed person was not going to have any effect for the purpose of disposal of this petition. With these broad submissions, it is urged that the petition deserves to be allowed.

5. Two status reports had been filed by the respondent-State. In the first status report, it was submitted that after joining of the petitioner in investigation, his photographs had been taken and compared with the objectionable photographs showing the prosecutrix with some other male and with the assistance and advice of the expert, it had been revealed that the



male shown in objectionable/vulgar photographs with the prosecutrix was none other than the petitioner himself and the petitioner has superimposed the photograph of some other person. It is alleged that this fact proved that it was the petitioner who had been making objectionable photographs of the prosecutrix viral. As further submitted, a pendrive containing telephonic recording of the petitioner with the brother of the prosecutrix had also been given to investigation agency wherein he had been extending threats to him after sending objectionable photographs. It may be started that in view of these allegations, the petitioner was directed to rejoin the investigation.

6. As per the second status report, as filed by the respondent-State, the petitioner has not cooperated with the investigating agency as the mobile phone which had been used by him for sending objectionable pictures and videos of the prosecutrix, has not been got recovered by him. Learned State counsel has argued that the instant petition had been filed by the petitioner on 10.05.2023 whereas warrants were ordered to be issued against him much before that date and even vide order dated 15.02.2023, proceedings under Section 82 of Cr.P.C. were initiated and proclamation was ordered to be issued on 11.04.2023. He was declared a proclaimed person on 14.06.2023 and the application for grant of pre arrest bail could not be allowed in the given circumstances. While further submitting that the allegations against the petitioner are serious in nature, it has been urged that the petition is liable to be dismissed.

7. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record carefully.



8. First of all, the question of maintainability of this petition has to be seen. It is apparent from the record that this petition had been filed on 10.05.2023 by the petitioner. Learned counsel for the complainant has placed on record copies of orders passed by the learned trial Court which reveal that non-bailable warrants were ordered to be issued against the petitioner, when his presence could not be secured after issuing notices and then an application was moved before the concerned Magistrate for initiation of proceedings under Section 82 of Cr.P.C. which was allowed and vide order dated 15.02.2023, proclamation was ordered to be issued against the present petitioner and he was ultimately declared a proclaimed person vide order dated 14.06.2023. Though a plea has been taken by learned counsel for the petitioner that since the order declaring him as a proclaimed person was passed by the concerned Court only after filing of the present petition, therefore, that order did not come in the way of this petition. However, this argument cannot be accepted as the well settled proposition of law is that filing of an anticipatory bail cannot be treated as appearance before a Court by a person against whom proceedings under Section 82 of Cr.P.C. are pending. Reference in this regard can be made to a recent pronouncement of Hon'ble Supreme Court reported as '**Srikant Upadhyay and others v. State of Bihar and another, AIR 2024 SC 1600**', wherein, the accused filed an application for pre-arrest bail after coming to know about the fact that proceedings under Section 82 of Cr.P.C. were initiated against them. It was observed that such conduct of the accused did not entitle them to seek benefit of pre arrest bail. Reference can also be made to '**Prem Shankar**



Prasad v. State of Bihar and another, (2022) 14 SCC 516, wherein the Hon'ble Supreme Court took note of the fact that the accused was absconding and concealing himself to avoid service of warrant of arrest and moved application for grant of pre arrest bail after proceedings under Sections 82/83 Cr.P.C. were initiated against him and rejected the plea of the accused for grant of pre arrest bail. Reference can also be placed upon *'Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730*', wherein it was observed that a person against whom warrant has been issued and is absconding or concealing himself in order to avoid execution of warrants and is declared as a proclaimed person in terms of Section 82 is not entitled to relief of anticipatory bail. In the present case also, it is quite evident that the petitioner filed this petition only after proceedings under Section 82 of Cr.P.C. were initiated against him and therefore, the fact that he was declared proclaimed person during the pendency of this petition cannot be made a ground to extend benefit of pre arrest bail to him. No doubt, he has joined and re-joined the investigation and his custodial interrogation might not be required but that also cannot be stated to be a ground for grant of benefit of pre arrest bail to an accused a matter of right as there is no proposition of law to this effect. Reliance in this regard can be placed upon *'Sumitha Pradeep v. Arun Kumar C.K. and another, 2022 (4) R.C.R. (Criminal) 977*', wherein it was also observed so.

9. In addition to the discussion as made above, it is also worthwhile mentioning that there are specific and serious allegations against the petitioner qua his repeatedly committing rape upon the prosecutrix by



blackmailing her. It is for the trial Court to give any conclusive finding as to relationship of the parties on the basis of evidence to be led before it during the trial and it is neither feasible nor appropriate for this Court to arrive at any such conclusion at this stage while considering the plea of pre arrest bail. The prosecutrix is yet to be examined. There is a reasonable apprehension that the petitioner might abscond. Taking all these circumstances into consideration, it is held that neither the petition for grant of pre arrest bail of the petitioner is maintainable nor even otherwise any ground has been made out for grant of the same. Accordingly, the petition is dismissed.

10. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

23rd May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |