

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

208

CRM-M No.24489 of 2023 (O&M)
Date of decision: 05.02.2024

Gulzar Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate,
Mr. Prabhdeep S.Bindra, Advocate and
Mr. Gurjas Gill, Advocate,
for the petitioner.

Mr. P.S. Pandher, AAG, Punjab.

Mr. Hitesh Verma, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 438 of Cr.P.C. seeking grant of anticipatory bail in case bearing FIR No.69 dated 08.04.2023 registered under Sections 376, 323, 406, 427 and 506 of IPC at Police Station City Sunam, District Sangrur.

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 orders received from the office of SSP Police Station Sangrur whereby written complaint sent by the prosecutrix (name withheld) to addressed to DGP had been sent. In this complaint, she had made prayer for transfer of

the present petitioner who was then serving as Assistant Sub Inspector at Police Station Moonak on the ground that she was living alone and he had been harassing her and issuing threats of life to her and there was apprehension of danger to her life and property at the hands of the petitioner. Along with the said complaint, another complaint as filed by the prosecutrix was also annexed alleging therein that she was married to one Bahadur Singh about 24 years back who was Inspector in CRPF and usually remained posted at different stations. She along with her daughter had been staying alone at Sunam. She alleged that she came in contact with the present petitioner about one and half year back. She had represented to the prosecutrix that he was a divorcee and on the pretext of performing marriage with her and alluring her, he developed physical relations with her by taking undue advantage of her being a lonely lady. She also alleged that the petitioner had even made her buy bullet motorcylce, LCD TV, Air Conditioner, Inverters, some gold jewellery and bed etc. from her money. He used to visit out of station with her but all the money was spent by her. She alleged that she had also filed complaint against the petitioner previously but since he was police official therefore by exerting pressure, those complaints were got compromised from her. It was also alleged by her that subsequently she came to know that he was already married. He had, however, executed a Karevanama/agreement in her favour representing that he would perform marriage with her but had again backed out from the same. Therefore, she prayed for taking action against him.

3. On the basis of these complaints, inquiry was conducted and it was revealed that the petitioner and the prosecutrix were living in consensual relationship earlier and their relations had now become strained. The investigation in the case is going on.

4. The present petition has been filed by the petitioner on the grounds that the respondent No.2 prosecutrix was admittedly having consensual relations with the petitioner since last two years and had even proclaimed to her husband that she wanted to stay with the petitioner and not with him. Even her husband has severed ties with her by making a statement that he had no objection to her relationship with the petitioner, she had sworn an affidavit now that she did not want to pursue the FIR against him. The allegations levelled in this case were totally false as it was the prosecutrix who was a shrewd woman and extorted money from him. She was in the habit of making complaints against him and then withdrawing the same. His custodial interrogation was not required. He was ready to join the investigation. The offences for which he had been booked had not been made out against him at all. Therefore, it is prayed that he deserves to be given benefit of bail.

5. It will not be out of place to mention here that vide order dated 30.05.2023, the petitioner was directed to join the investigation and learned State counsel has submitted that he had joined the same as on 02.06.2023. It is, however, submitted that both the petitioner and the prosecutrix who were major, were having extra marital relations and were in live in relationship since long time. In the past also, the

prosecutrix had been filing different complaints against the petitioner which were subsequently compromised but in the FIR in hand, she had levelled serious allegations against him and investigation was going on in the same. The petitioner had done his best to not appear and join investigation after lodging of the FIR and he had joined the same only on passing of orders by the Court.

6. It has been further submitted in the report that the petitioner had been suspended and a departmental inquiry had also been initiated against him. The allegations against him are serious and grave in nature and require custodial interrogation. Therefore, it is submitted that the petition does not deserve to be allowed.

7. The respondent No.2 has also filed separate reply submitting therein that she came into the contact with the petitioner about two years back who represented himself as a divorcee. They had started liking each other with the passage of time and had even started living together. He had been introducing her as his wife to the neighbourers. However, subsequently, his behaviour started changing and he had been demanding money from her. She had purchased bullet motorcycle, 5.5 tolas of gold jewellery and other items by spending money but the demands of the petitioner kept on increasing and when she started resisting, then he started physically assaulting her. She was forced to have unnatural sex with him. She further alleged that on 01.01.2023, the petitioner had come to her along with three other persons and had left two of them with her by making some excuse and both of those two tried to outrage her modesty.

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An altercation had taken place and she was again extended merciless beatings by the petitioner but she managed to save herself by locking her inside her room. She had given information to the police but no action was taken. It is further submitted that apprehending arrest and dismissal from service, the petitioner had apologized to her and promised to mend his behaviour and that is why she had entered into a compromise with him previously. He had even executed a Karevanama Annexure R-2/2 in her favour. It has also been submitted that on 09.06.2023, the petitioner had extended beatings to her and the incident was even captured in CCTV camera, the footage of which was annexed in the form of DVD as Annexure R-2/4 with her reply. She submitted that after being extended benefit of interim bail, the petitioner has been misusing the same. Therefore, she has prayed for dismissal of the petition.

8. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact it was a case of consensual relationship. They had been living in live in relationship. No case for commission of offence of rape had been made out as against him. The entire allegations as levelled in the complaint filed by the prosecutrix were false as she was in the habit of doing the same. Therefore, it is argued that the petition deserves to be allowed as the petitioner has already joined investigation and his custodial interrogation is no more required.

9. Per contra, learned State counsel assisted by learned counsel for respondent No.2 have argued that there are serious allegations against

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the petitioner. They have argued that the petitioner is an employee in Punjab Police and while being posted as such, is expected to be acting in a responsible manner. However, not only, he has remained in an open illicit relationship with the prosecutrix but is also alleged to have misusing the concession of interim bail as granted to him by assaulting the victim on 09.06.2023 and is also alleged to have criminally intimidated her. The act and conduct of the petitioner does not make him entitled for extending benefit of pre-arrest bail which is to be granted in extraordinary circumstances and not like the present one. Hence, it is argued that the custodial interrogation of the petitioner is required and the petition does not deserve to be allowed.

10. I have heard learned counsel for the petitioner as well as learned State counsel assisted by learned counsel for respondent No.2 at considerable length and have gone through the record carefully.

11. The petitioner is alleged to have been subjected the victim to rape on the pretext of performing marriage with her and has been booked and challaned for commission of offence punishable under Section 376 of IPC. The offence of 'rape' as defined under Section 375 of IPC sets out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her 'consent', commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific

sexual act. It will also be relevant to refer to Section 90 of IPC as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent. The well settled proposition of law is that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a women with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act.

12. In the instant case, as per the version of the respondent No.2 prosecutrix herself, she had been living in live in relationship with the petitioner previously. Both the parties are admittedly married elsewhere. The prosecutrix has not obtained any formal decree of divorce from her husband. As such, there was no question of any promise to marry being given to her by the petitioner and any breach of such promise, when the petitioner himself was also married. The relationship between the parties can be considered to be purely of consensual nature. Their relationship was in existence during the subsistence of marriage of both of them. The fact as stand clearly indicate that ingredients of offence under Section 376 of IPC are not prima facie established and allegations on the face of record with regard to commission of this offence cannot be stated to be true.

13. However, now it is to be seen that whether the petitioner deserves to be extended benefit of pre-arrest bail. He is admittedly a

police official of the rank of ASI working with Punjab police. He is also a married person living with a female who is also married. The adulterous relationship has not been specifically denied by the petitioner. Rather, he has himself, placed on record Annexure P-3, a compromise admittedly effected between himself and the prosecutrix as on 02.05.2023 whereby, he is shown to have admitted that the respondent No.2 would be staying in his Government quarter or he will take a rented home for her, he will give the rental expenses and also that he will keep the respondent No.2 with himself, hereever he shall remain during service. As per the claim of the respondent No.2 as made in her reply, after being extended benefit of interim bail, he has assaulted her by entering her abode and has extending beating to her. Certain photographs captured from the CCTV camerea installed in her premises have been placed on record which show him while assaulting the prosecutrix. Only because of the fact that the petitioner has joined the investigation once, it cannot be stated that he has become entitled to grant of pre-arrest bail as a matter of right. The well settled proposition of law is 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. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well

ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

14. Miscellaneous application(s), if any, also stand disposed of.

05.02.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No