

Neutral Citation No.2024:PHHC:016604

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

299

CRM-M No.33346 of 2023
Date of decision: 06.02.2024

Ankush ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Yuvraj Singh Chauhan, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

Mr. Manoj Pundir, Advocate,
for respondent No.2.

MANISHA BATRA, J.

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.0317, dated 04.05.2023, registered under Sections 323, 328, 376, 452 and 506 of IPC at Police Station Indri, District Karnal (Haryana).
2. Brief facts 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) who was admitted in a Nursing Home at Karnal as on 03.05.2023 and information qua whose

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admission had been received by the police. She recorded a statement before the police that she was married and was having two small children. Her son is only six months old. She uses to give milk to her children twice in the night. On the night of 02.05.2023, she had woken up at about 2:30 AM for the purpose of making the milk warm for giving to her children and had kept the same on the gas stove. Thereafter, while she was going towards the washroom, the petitioner who is living in her neighbourhood, came there from the roof side and after catching hold of her from the back side, he closed her mouth and forcibly took her towards the roof while showing her a knife. He extended beatings to her and tried to remove her clothing. Thereafter, he made her consume some stupefying/intoxicating liquid on consuming which, she did not remain in full consciousness. He made her lie on a cot and after removing her clothing, committed rape upon her. Thereafter, she had lost her consciousness and regained the same in the hospital. Her medico legal examination was also conducted. A case under Sections 323, 328, 376, 452 and 506 of IPC was registered. Investigation is going on.

3. The present petition has been filed by the petitioner seeking pre-arrest bail on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. Infact, the prosecutrix is much elder to him and there is an illicit relationship between her and himself and it is he who was induced by her to enter into such relationship. It is submitted that his custodial interrogation is not required. It is a case of consent and not of rape. The version of the prosecutrix is quite

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improbable and unnatural and is not believable. Hence, it is argued that he deserves to be given concession of pre-arrest bail.

4. The bail application has been resisted by the State in terms of status report. Learned State counsel assisted by learned counsel for respondent No.2 has argued that there were serious allegations against the petitioner. He had forcibly taken the victim to the roof of her house and after making her consume some stupefying substance, he had ravished her. The further custodial interrogation of the petitioner was required for thorough investigation of the matter by the police despite the fact that he had joined the same. Hence, he argued that the petition does not deserve to be allowed.

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

6. The petitioner is alleged to have criminally trespassed into the house of the prosecutrix as on the night of 02.05.2023, is further alleged to have forcibly taken her on the roof of her side and while extending beatings to her and making her consume some intoxicating substance, is alleged to have extended threats to her and committed rape upon her. The allegations against him are grave in nature. In her statement recorded under Section 164 of Cr.P.C. before the Judicial Magistrate, had reiterated the same allegations. Even in his disclosure statement stated to have been recorded on 21.07.2023, he is shown to have admitted that he had caught hold of the victim on the fateful night, had forcibly taken her

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to the roof while extending beatings to her and had committed rape upon her. Learned State counsel has placed on record copy of report prepared by Karnal Nursing Home, Karnal with regard to admission and discharge of the prosecutrix as per which she had been admitted on 03.05.2023 at 6 AM with alleged history of ingestion of one tablet of Celphas and it was a suspected case of consumption of aluminium phosphide and further as per the FSL report, also aluminium phosphide was detected in the gastric lavage and urine of the victim. However, since there is no contention on behalf of the petitioner that it was not he who had ingested Celphos tablet/ aluminium phosphide to her and since at this stage, there is nothing on record to show that there was any illicit relationship between the petitioner and the prosecutrix, therefore, this question cannot be gone into at this stage and has to be decided by learned trial Court on the basis of evidence produced on record.

7. Undoubtedly, the petitioner has joined investigation and neither any recovery is to be effected from him nor his custodial interrogation is required. However, merely because of that fact 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

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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.

06.02.2024
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(MANISHA BATRA)
JUDGE

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