

Neutral Citation No.2024:PHHC:045210

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

298

CRM-M No.36710 of 2023
Date of decision:03.04.2024

Ashok

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R.S. Kundu, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Surinder Gandhi, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner seeking pre arrest bail in case arising out of FIR No.187 registered under Sections 328, 376 (2) (n), 494 and 495 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Urban Estate, Rohtak, District Rohtak, Haryana, on the basis of written complaint filed by the complainant “R” (name withheld) on 03.06.2023 alleging therein that his wife was a beautician by profession. In November 2019, she had introduced him with the petitioner as his dharam bhai. Sometime thereafter, the petitioner had shifted into some rented accommodation near his house and the relations

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between their families had become intimate to that extent that whenever his wife used to go to buy articles for her parlour, she used to take the petitioner with him. On 28.05.2023 also, his wife had gone with the petitioner for 4-5 days on the pretext of illness of the mother of petitioner at Village Shekhpura. On 02.06.2023, he found his daughter "L" (name withheld) to be quite perplexed and on making probe, she disclosed that on 10.01.2021, when she was alone at her house, then the petitioner had come there and had given her juice laced with some intoxicating substance on consuming which she was not in her senses and taking advantage of that fact, he had taken her nude photographs and then committed rape upon her and had also videographed the incident. She also disclosed that, thereafter, he had been repeatedly ravishing her on finding opportunity by extending threats to make her photographs and videos viral and even on 08.04.2023, he had ravished her. He also alleged that his daughter also showed him photocopy of a certificate showing that his wife and petitioner had performed marriage. On the basis of this complaint, initially a case under Sections 328, 376 (2) (n), 494 and 495 of IPC and Section 6 of POCSO Act was registered. During investigation, offence under Section 495 of IPC was deleted whereas offence under Sections 66-E of I.T. Act was added. The petitioner had moved an application for grant of anticipatory bail before the POCSO Court, Rohtak which had been dismissed vide order dated 18.07.2023.

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

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implicated in this case. Infact, the complainant is using his daughter as a puppet to harass the petitioner. The victim had also got registered FIR bearing No.51 dated 09.08.2021 under Section 354-A of IPC at Police Station Women, PS, Rohtak previously whereas another FIR No.19 dated 11.01.2022 at Police Station Rohtak City registered under Sections 120-B, 342, 376-D and 506 of IPC against some other persons and the entire family is in the habit of blackmailing other persons. The petitioner has filed a petition under Section 11 of Hindu Marriage Act, 1955 for declaring the marriage between him and the wife of the complainant as null and void and the FIR in this case is a counterblast to the said petition. Even the mother of the victim had lodged FIR No.24 dated 30.04.2011 at Women Police Station Narnual, District Mahendergarh registered under Sections 376 (2) (n) and 364 of IPC in which cancellation report had been filed. The victim, her mother and the complainant are members of one gang who are habitual of extorting money from the innocent persons. The custodial interrogation of the petitioner is not required. There is unexplained and inordinate delay in lodging of the FIR. There is no medical evidence on record to connect the petitioner with the subject crime. Therefore, it is urged that the petition deserves to be allowed.

3. Status report has been filed by the respondent-State wherein it is submitted that the victim had been medically examined and as per the opinion of doctor, the possibility of sexual assault upon her cannot be ruled out. In her statement recorded under Section 164 of Cr.P.C., the

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victim has supported the version of the prosecution. The allegations against the petitioner are serious in nature. The mother of the victim claiming herself as unmarried has solemnized second marriage with the petitioner and she along with the petitioner has been made as an accused for commission of offence punishable under Section 494 of IPC in this case. It has been submitted by learned State counsel assisted by learned counsel for the complainant that the petitioner has joined investigation on 05.08.2023 and had suffered disclosure statement. His mobile phone has also been taken into custody.

4. I have heard learned counsel for the petitioner and learned State counsel assisted by learned counsel for the complainant and have gone through the record.

5. The allegations against the petitioner are that he had repeatedly ravished the victim who is daughter of the co-accused since the year 2021 till 08.04.2023. No doubt, as per the medico legal report, the possibility of the victim being subjected to sexual assault could not be ruled out. However, as per this very report, there is no evidence of the victim being subjected to intercourse and sexual abuse. No external or internal injury was found on her person. The petitioner has placed on record copy of FIR No.51 dated 09.08.2021 registered at Police Station Women, District Rohtak showing that the present victim had lodged a case under Section 354-A of IPC as against one Sandeep and copy of FIR No.19 dated 11.01.2022 registered at Police Station Rohtak City showing that the victim lodged another FIR against five persons namely, Ritik, Manish

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Hamid, Kabir and Vinay levelling allegations of committing gang rape upon her. The petitioner has already joined the investigation. No recovery is to be effected from him. His custodial interrogation is not required. Keeping in view the inordinate and unexplained delay in lodging of FIR coupled with the fact that the victim and her family appears to be in the habit of lodging FIRs in such like offences as in the instant case against other persons, I am of the considered opinion that it is a fit case to exercise powers under Section 438 of Cr.P.C. and to extend benefit of anticipatory bail to the petitioner. Accordingly, the petition is allowed. The petitioner is directed to surrender before the Investigating Agency within a period of 15 days. It is further ordered that in the event of his arrest, the Investigating Officer/Arresting Officer shall release him on bail subject to his furnishing bonds to his satisfaction. The petitioner is also directed to abide by the following conditions:-

(i) The petitioner shall cooperate with the investigation and shall appear before the investigating agency as and when required.

(ii) He shall not directly or indirectly make any inducement, threat or promise to the prosecution or any other person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.

(iii) He shall not commit any similar offence while on bail.

6. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for

cancellation, if any, and pass appropriate orders in accordance with law.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

03.04.2024

manju

Whether speaking/reasoned

Whether reportable

(MANISHA BATRA)

JUDGE

Yes/No

Yes/No