

RAHMUDDIN ANSARI

....Petitioner

VERSUS

STATE OF HARYANA

....Respondent

CORAM : HON’BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Deepak Jindal, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Nitish Sharma, Advocate for the complainant.

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
119	06.07.2023	WPS, Rewari	452,376(2)(n), 328, 506, 379-A, 34 of Indian Penal Code, 1860 (for short ‘IPC’)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the abovementioned FIR was registered on the basis of complaint filed by the prosecutrix alleging therein that the petitioner was residing along with his wife in her neighborhood. On 07.03.2023, she was alone in her house when at about 10-11 PM, he trespassed therein and forcibly committed rape upon her. On 22.3.2023 also, when she was alone in her house during day time, the petitioner again entered into her house and by making her nude videos and threatening to make the same viral, if she did not comply with

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his commands, he again ravished her and at that time another obscene video of the prosecutrix was prepared. The prosecutrix apprised the wife of the petitioner about this fact but instead of understanding, she threatened her to remain quiet and otherwise to kill her family and make her video viral. It has been further alleged by her that on 05.05.2023, the petitioner came to her house in the evening and by extending threats and snatching her jewellery kept in the house along with an amount of `8,000/-, he forcibly took her out of her house. She was made to consume some intoxicating substance, on consuming which, she lost her consciousness. She was taken to some hotel in Jaipur and was ravished and thereafter the petitioner kept on taking her to different places till 16.05.2023 and repeatedly committed rape upon her. She was taken back to her house on 16.05.2023. By that time, her husband had lodged a complaint vide FIR No.94 dated 07.05.2023 qua her having gone missing. However, due to the threats being extended by the petitioner as well as one police official Amit who had even extended beatings to the husband of the prosecutrix thereby pressurizing her husband and herself to not to say anything about the petitioner, she did not record the statement as against the present petitioner. She alleged that even, thereafter, the petitioner had been harassing her by stalking her even though she had changed her address and, therefore, she prayed for taking action against the culprit. After registration of the FIR, investigation proceedings had been initiated and are going on.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. In fact, it is a case of consensual physical relationship between the petitioner and the prosecutrix for the last many months. She had voluntarily accompanied him on 04.05.2023. Her husband got lodged FIR No.94 dated

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07.05.2023 and in her statement recorded under Section 161 Cr.P.C before the Police and 164 of Cr.PC before the concerned Magistrate, she stated that she had gone with the petitioner out of her own free will and had lived with him and nothing wrong had happened with her. It is argued that, however, with regard to the same incident, now this FIR has been lodged after a gap of two months by the prosecutrix under the pressure of her husband, only with a view to harass the petitioner. The story as narrated in the FIR is totally wrong and false. Learned counsel for the petitioner has drawn the attention of this Court towards Annexure P-3, which are some photographs taken from the CCTV camera stated to be installed in the street in front of the house of the prosecutrix showing her while leaving her house at about 7-10 PM on 05.05.2023 on her own. He has also referred to certain photographs (Annexure P-4) of the petitioner and the prosecutrix, showing them to be in very intimate and comfortable position and also suggesting that they were having close and romantic relationship.

4. It is further argued by learned counsel for the petitioner that since FIR No.94 dated 07.05.2023 was lodged by the husband of the prosecutrix and even the statement of the prosecutrix in that FIR had also been recorded, therefore, the instant FIR which was on the same allegation could not be taken cognizance of. He further argued that the custodial interrogation of the petitioner is not required and he is ready to join the investigation. It is, therefore, urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has placed reliance upon authorities cited as '*T.T. Antony Vs. State of Kerala 2001 (3) RCR (Crl) 436*' and '*Anju Chaudhary Vs. State of Uttar Pradesh and another, 2013(1)*

RCR (Crl.) 686', wherein it was observed that if two different FIRs have been

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lodged with regard to the same incident involving one or more than one cognizable offences, the court in order to examine the impact of one or more FIRs has to rationalize the facts and circumstances of each case and if it is found that there is sameness in both the FIRs and they relate to the same incident, the second FIR may be liable to be quashed.

5. Status report has already been filed by respondent-State, as per which, closure report has been prepared in case bearing FIR No. 94 dated 07.05.2023. However, learned State counsel, assisted by learned counsel for the complainant has submitted that there are serious allegations against the petitioner. The FIR No.94 and FIR No.119 cannot be stated to be lodged on same grounds. It has come on record that the statements under Section 161 and 164 of Cr.PC had been recorded by the prosecutrix in FIR No.94 under the pressure of some police official as well as the present petitioner and therefore, no relevance can be given to those statements and same cannot be stated to be binding for the purpose of the present case in which the prosecutrix after mustering courage to reveal the truth had recorded the entire facts. It is further submitted that custodial interrogation of the petitioner is must for the purpose of thorough and proper investigation of the matter. Hence it is urged that prayer made by the petitioner does not deserve to be allowed.

6. I have heard both the counsel for the petitioner as well as learned State counsel and have gone through the record carefully.

7. As per the allegations, the petitioner had criminally trespassed into the house of the prosecutrix prior to 05.05.2023 and had committed rape upon her. As per the further allegation, on 05.05.2023, he had forcibly taken her away from her house and after making her consume some intoxicating substance after which she became unconsciousness, he had taken her to some

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hotel at Jaipur and then to other places, wherein she was repeatedly ravished by him. He had also snatched her gold ornaments and money kept in her house on 05.05.2023. FIR No.94 dated 07.05.2024 which has been lodged on the complaint of her husband qua her having gone missing, stands recommended for cancellation. In the said FIR, she has recorded statements under Section 161 as well as 164 Cr.PC admitting the factum of her being in consensual relationship with the petitioner and having voluntarily gone with him. The present FIR has been filed after a gap of two months from the date of filing of FIR No. 94. The prosecutrix is an adult married woman having kids. Though at the stage of considering a plea for bail, it is not feasible for the Court to draw any conclusion, much less to return any finding on the point as to whether it was a case of consensual physical relationship or of rape. Such a finding or decision must await a thorough assessment and evaluation of evidence to be led by the parties at the trial. However, there appears to be no cavil that the story narrated by the petitioner that she had been forcibly taken away from her house appears to be doubtful from the CCTV footage of the camera which has been seen from the pen drive produced on record. At this stage, it can hardly be said with any conviction that the victim was subjected to rape, considering the fact that statement recorded under Section 164 of Cr.P.C. in the FIR No. 94, the victim had not stated anything against the accused, then from the photographs showing them to be in romantic position, it cannot be said with any certitude that it was a case of rape. Moreso, it is for the Trial Court to decide this question after evaluating the evidence to be produced on record. The investigation in this case stands completed. Trial is likely to take time. Upon a conspectus of the forgoing discussion, this Court is persuaded to extend benefit of pre-arrest bail to the petitioner. Accordingly, the petition is allowed and the

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petitioner is granted concession of anticipatory bail, subject to surrendering before investigating officer within a period of four weeks’ and thereafter as and when required and subject to complying with the following terms and conditions:-

- (i) He shall furnish personal/surety bonds to the satisfaction of the investigation officer.
- (ii) The petitioner shall cooperate with the investigation officer and shall appear before him as and when required.
- (iii) He shall not directly or indirectly make any inducement, threat or promise to any 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.
- (iv) He shall not commit any similar offence while on bail.

8. It is made clear that the observation made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

06.03.2024
Deepak Patwal

(MANISHA BATRA)
JUDGE

- 1.Whether speaking/reasoned : Yes/No
- 2.Whether reportable : YES/NO