

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

294

CRM-M-38206-2023 (O&M)
Date of Decision: 15.02.2024

Narinder SinghPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vaibhav Goel, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.(ORAL)

1. The prayer in the present petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in case FIR No.310 dated 13.06.2023, registered under Section 346 of IPC at Police Station Sector 32-33, Karnal, wherein Sections 376(2)(n), 506, 34 of IPC and Sections 3(2)(v) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (*for short 'SC/ST Act'*) were added later on.
2. The brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Section 346 of IPC on the basis of a written complaint filed by the complainant 'M' (*name withheld*), who is uncle of the victim, alleging therein that the victim, who was his niece, had come from her matrimonial house to her parental home. She had left her children at his house on the same day and had gone somewhere on 11.06.2023 but did not return. After registration of FIR, investigation proceedings were initiated. On 14.06.2023, a police party reached at the house

of the petitioner and the victim was recovered from his custody. She was taken to the Magistrate and her statement under Section 164 of Cr.P.C. was recorded on the same day, wherein she stated that she knew the petitioner as a friend from the last one year. He had now started emotionally blackmailing her on the plea that he would commit suicide if she will not come to live with him. She further stated that on 11.06.2023, she had come out of her house, when the petitioner, who was in a vehicle, made her sit in the same and then took her to a place, wherein he forcibly procured her signatures on some papers qua their staying in live-in-relationship and had committed rape upon her. On the basis of her statement, offences under Sections 376(2)(n), 506, 34 of IPC were added. The victim was medically examined. On 03.08.2023, offences under Sections 3(2)(v) and 3(2)(v)(a) of the SC/ST Act were also added on production of copy of certificate by the complainant showing that she was belonging to scheduled caste. On 27.01.2023, offences under Sections 342 and 120-B of IPC were also added. The co-accused had joined investigation and had been formally arrested. It was also submitted that the present petitioner had also joined investigation in pursuance of directions given by this Court. FSL report has also been received, as per which, human semen was detected on the clothing of the victim.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. In fact, the petitioner, who is a 23 years' old youth, had come into contact with the victim, who is a married woman having two children through some other friend. The victim used to share her problems with him and conveyed to him that she was not having normal relationship with her husband and was not happy with her married life. They had started liking each other and had decided to live together in live-in-relationship with

their free consent and without any coercion. The victim had even filed a petition jointly with him in the High Court, bearing **CRWP-6013-2023**, seeking protection of their lives and liberty at the hands of her family members. It is submitted that the father of the victim is working in Haryana Police and it was under his pressure that the victim had been forcibly taken away from him, when she was living with the petitioner in live-in-relationship. The allegations that he had committed rape upon her or had criminally intimidated her or had confined her, are totally false. No case for commission of offence punishable under either of the provisions of Section 3 of SC/ST Act had been made out against him. The statement under Section 164 of Cr.P.C. was recorded by the victim under the pressure of her father.

4. Learned counsel for the petitioner has further argued that there is Whatsapp chat between the petitioner and victim showing their intimate relationship. With regard to maintainability of the petition under Section 438 of Cr.P.C., in view of the fact that the provisions of offence punishable under Section 3(2)(v) and 3(2)(v)(a) of the SC/ST Act have also been added, it is argued that the same are not attracted at all. It is also submitted that the petitioner had already joined investigation; his custodial interrogation is not required; no useful purpose would be served by detaining him in custody. Therefore, it is argued that the present petition deserves to be allowed and the benefit of interim pre-arrest bail, as already granted to petitioner, deserves to be made absolute.

5. *Per contra*, learned State counsel has argued that the allegations against the petitioner are quite serious in nature. The petitioner has also been booked for commission of offences punishable under Sections 3(2)(v) and 3(2)(v)(a) of SC/ST Act and hence anticipatory bail application is not maintainable

qua the same. While admitting that the petitioner has joined the investigation, it is argued that the petitioner does not deserve to be given concession of pre-arrest bail.

6. I have heard learned counsel for both the parties at considerable length and have also gone through the material placed on record carefully.

7. The case as set up by the prosecution is that the petitioner had been exerting pressure upon the victim to live with him and was emotionally blackmailing her by saying that otherwise he would commit suicide. As per the further version of the prosecution, on 11.06.2023, the petitioner had taken the victim to a house, wherein she was forced to sign some live-in-relationship certificate; was confined and then was ravished by him. The victim admittedly belongs to scheduled caste category. Though, in her statement recorded under Section 164 Cr.P.C. on 14.06.2023, the victim gave the statement as mentioned above but it is to be seen as to whether the version as given by her *prima facie* inspires confidence to prove that she had been blackmailed by the petitioner; was forced to sign any paper and then was ravished by him. The petitioner has placed on record photographs of Whatsapp chats that had taken place between the victim and himself during the period from May, 2023 till 10.06.2023. On a perusal of these chats, it is very much clear that in fact both of them were in an intimate relationship. So much so that even minutest details were discussed by the victim with the petitioner. These chats also show that even on 10.06.2023, i.e. just one day before when she was allegedly taken away by the petitioner from her house, they had been in a constant touch with each other through Whatsapp calls and chats and had been talking to each other and the petitioner had even sent some location to her. Therefore, it is difficult to believe at this stage that the petitioner had forcibly taken her or had kept her confined.

Rather, it appears to be a case of consensual relationship between two adult persons.

8. The petitioner has also placed on record copy of petition bearing CRWP-6013-2023 showing that as on 12.06.2023, the victim jointly with him had filed a petition before this Court seeking protection of their lives and liberty by impleading the family members and even husband of the victim as respondents therein. It is also mentioned in this petition that they had fallen in love with each other and had decided to live together in a live-in-relationship without any pressure. This petition is shown to have been dismissed as withdrawn on 05.07.2023 as having been rendered infructuous. The petitioner has also placed on record a copy of order dated 15.06.2023, passed by this Court in CRWP-6064-2023, when the victim was allegedly taken away forcibly from his house by her father, who is a police official along with some other police officials. The petitioner has also placed on record copies of train tickets showing that he had been regularly travelling to Mathura to meet the victim as she was residing at that place in her matrimonial home. A perusal of the Whatsapp chats, which are shown to have been exchanged between the parties as on 23.05.2023 to 27.05.2023, reveal that the victim had even intimated the petitioner that she was coming to her parental house at Karnal and would be meeting the petitioner on 05.06.2023. She is even shown to have shared the phone numbers and addresses of her family members with the petitioner during the period from 23.05.2023 to 27.05.2023, which reflect that the petitioner as well as the victim had already planned to live together and file a protection petition before this Court. It was for impleading the family members and husband of the victim as parties to the said petition that the details of their names etc. had been shared by the victim. So far the plea that

she was not having good relationship with her husband is concerned, the same is reflected from Whatsapp chats made by the victim with the petitioner on 27.05.2023 at about 01:19 AM, wherein she is shown to have written “*Or us kutte ka Deepak Maddan h or age, 34 ok*”, meaning thereby that she was giving the details of the age of her husband to the petitioner while abusing him. Undoubtedly, in her statement recorded under Section 164 Cr.P.C., she has alleged that the petitioner had taken her forcibly; had made her sign certain certificates and then had ravished her but on the face of the record and *prima facie*, it appears to be a case of consensual relationship. Therefore, it is highly debatable as to whether the offence punishable under Section 376(2)(n) of IPC has been made against the petitioner or not ?

9. So far as the offences punishable under Sections 3(2)(v) and 3(2)(v)(a) of SC/ST Act are concerned, the same are attracted only when a *prima facie* case for commission of any offence under the provisions of IPC is made out against a member of scheduled castes and scheduled tribes, which is punishable with imprisonment for a term of ten years or more against a person or a property or a case as shown in the schedule of this Act is made out. At the cost of repetition, it may be stated that the question that the victim had been repeatedly ravished by the petitioner is debatable ? As such, the provisions of Sections 3(2)(v) and 3(2)(v)(a) of SC/ST Act can also be not stated to have been attracted *prima facie*. So far as the question that the petitioner, being booked for commission of offences punishable under Sections 3(2)(v) and 3(2)(v)(a) of SC/ST Act as well, is entitled to benefit of pre-arrest bail is concerned, the well settled proposition of law in this regard is that when the complaint does not make out any *prima facie* case for applicability of the provisions of SC/ST Act, the bar created under Sections 18 and 18-A shall not

apply and anticipatory bail could be granted to the accused. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in *Prathvi Raj Chauhan vs. Union of India : AIR 2020 SC 1036* and *Dr. Subhash Kashinath Mahajan vs. State of Maharashtra and another : (2018) 6 SCC 644*, wherein it was observed that anticipatory bail could be granted if a *prima facie* case for commission of offence under the SC/ST Act is not made out or if it can be shown that the allegations were false. At the cost of repetition, it may be stated that the victim is a married lady having two children. She had gone with the petitioner on 11.06.2023 and it was her father, who is a police official, along with some other police officials, who had brought her from the house of the petitioner and it is not a case where the victim had made efforts to take herself out the house of the petitioner. The petitioner had lodged a separate FIR with the allegations that he and his family members were assaulted at that time. In this case, the petitioner has joined the investigation in pursuance of order dated 04.08.2023. His detention would not serve any useful purpose. His presence can be secured even otherwise also. Hence, keeping in view the entire facts and circumstances, I am of the considered view that the petitioner deserves to be given benefit of pre-arrest bail.

10. Accordingly, the present petition is allowed and the order dated 04.08.2023, granting interim bail to the petitioner, is made absolute, subject to the conditions envisaged under Section 438(2) Cr.P.C. This order shall also be subject to the following conditions:-

- (i) The petitioner shall cooperate with the investigation and shall appear before him as and when required.
- (ii) 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.

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

11. It is made clear that the observations 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.

15.02.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>