

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M No.45960 of 2023
Date of Decision: 11.03.2024

Mani ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Davinder Singh Saini, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Ms. Dhandeep Kaur, Advocate,
for respondent No.2.

MANISHA BATRA, J.(Oral)

1. This petition has been filed by the petitioner seeking concession of pre arrest bail in case arising out of FIR No.0045 registered under Sections 363 and 366 of IPC at Police Station Hariana, District Hoshiarpur, Punjab.

2. The facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Sections 363 and 366 of IPC on the basis of statement of "B" (name withheld) mother of the prosecutrix "J" (name withheld) recorded on 21.05.2023 alleging therein that the victim who was her 14 year old daughter had been enticed away by the present petitioner on the evening of 19.05.2023 on the pretext of performance of marriage. After registration of FIR, investigation proceedings have been initiated. The victim was recovered on 26.05.2023 from Bus Stand Bhikhowal. Her statement under Section

Neutral Citation No. 2024:PHHC:034665

164 of Cr.P.C. as well as under Section 161 of Cr.P.C. were recorded. In her statements, the victim stated that the petitioner had developed physical relations with her forcibly against her consent in a hotel at Chintpurni by taking her there. Offences under Sections 376 and 506 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) were added. The medical examination of the victim had also been conducted. The petitioner filed this petition seeking pre arrest bail. Vide order dated 14.09.2023, the present petitioner was directed to join the investigation. It was observed that the respondent No.2-complainant mother of the prosecutrix through her counsel had given no objection if bail was granted to the petitioner as the matter stood compromised between the parties on 21.08.2023.

3. It is argued by learned counsel for the petitioner that as per the forensic report, no human semen and male DNA was detected on the vaginal swabs of the prosecutrix. The petitioner has joined investigation. His custodial interrogation is not required. Even a compromise has been effected between the parties and as such, it is argued that it is a fit case for granting benefit of pre arrest bail to the petitioner.

4. The respondent-State has filed status report as per which the petitioner had been avoiding execution of warrants issued against him and vide order dated 05.08.2023, proceedings under Section 82 of Cr.P.C. had been initiated against him. This fact as well as the fact that he was a habitual offender and a case bearing FIR No.15 dated 27.01.2023 registered under Sections 307, 323, 324, 325, 341, 427, 148 and 149 of IPC at Police Station Haryana, District Hoshiarpur had been registered against him had been

concealed by him and, therefore, it is argued by learned State counsel that

Neutral Citation No. 2024:PHHC:034665

the petitioner does not deserve to be given concession of anticipatory bail.

5. It will be relevant to mention here that though undoubtedly, proceedings under Section 82 of Cr.P.C. had been initiated against the petitioner vide order dated 05.08.2023 passed by learned trial Court however, in the meanwhile, the petitioner had moved this petition and prior to declaring him a proclaimed person, the petitioner had been directed to be released on interim bail vide order dated 14.09.2023 and has joined the proceedings also. As such, no inference can be drawn that initiation of proceedings under Section 82 Cr.P.C. is a ground to deny benefit of bail to the petitioner as the same were not completed by the time, he had filed this petition.

6. 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.

7. The petitioner is alleged to have enticed away the minor daughter of the complainant and is further alleged to have subjected her to the act of penetrative sexual assault by taking her into a hotel at Chintpurni though, the version of the petitioner is that a compromise has been arrived at between the parties and Annexure P-3 copy of a compromise shown to be signed by him as well as the complainant has been placed on record and Annexure P-2 copy of photo of the petitioner and the prosecutrix showing them to be in comfortable position, has also been annexed on record to show that they were having friendly relations with each other. It is also a fact that as per the DNA report, no male DNA or human semen was detected on the vaginal swabs of the victim. However, the prosecutrix was minor aged 14

Neutral Citation No. 2024:PHHC:034665

years only at the time of the incident when she had been taken away by the petitioner. The petitioner is having criminal antecedents and this fact has been concealed by him in the petition which has been filed by him before this Court rather in para No.13 of the petitioner, it is mentioned that there is no other FIR registered against the petitioner. Even joining of investigation is not a ground to grant the prayer made by the petitioner for grant of pre arrest bail. The allegations against the petitioner are serious in nature. No relevance whatsoever can be given to the compromise which is stated to have been arrived at between the petitioner and the complainant at this stage. Even non-detection of DNA is also not a ground to deny the fact that the victim who was a minor was not subjected to rape. Her consent was not of any consequence. 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 nature of the subject offences, the fact that the petitioner has concealed that he is already involved in a case wherein one of the offences alleged against him is offence punishable under Section 307 of IPC which falls within the degree of

Neutral Citation No. 2024:PHHC:034665

heinous crime and further keeping in view the fact 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.

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

11.03.2024	(MANISHA BATRA)
manju	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No