

Neutral Citation No. 2024:PHHC:016458

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

301

CRM-M-57646-2023 (O&M)
Date of decision: 06.02.2024

Mahesh Pandey

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Salil Dev Singh Bali, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 438 of Cr.P.C. by the petitioner seeking grant of anticipatory bail in case FIR No. 196 dated 19.07.2023, registered under Sections 376, 506, 509, 34 of IPC (Sections 467, 468 of IPC added later on) at Police Station Udyog Vihar, District Gurugram.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant/victim 'K' (*name withheld*) on 19.07.2023, alleging therein that she was an actress in Bhojpuri films. Recently, one song picturized on her had become a hit and was liked by many viewers. On 23.06.2023, the petitioner sent a message to her through Instagram making request for taking her interview with regard to the said song. He also requested her to give said interview on 29.06.2023 and also

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suggested that he would get some 3/4 Star hotel booked for that purpose. On 29.06.2023, on the asking of the petitioner, she had gone to Raddison Blue Hotel. On reaching there, she did not find the petitioner to be present there. On making call to him, he told her that a room was got booked by him and she could go there if she wished to. On making enquiries from the reception, the victim came to know that the room was not booked in the name of the petitioner and on calling him, he disclosed to her that by making fake ID in the name of Subhash Kumar, he had got it booked. Sometime thereafter, the petitioner came to that room and offered to have something to eat before taking the interview. After having meals, instead of taking interview, he started drinking Vodka and thereafter, while pushing her on the bed of the said room and while saying that her interview will be taken on the bed today, he started molesting her. After removing her clothing, he had also put his fingers inside her vagina. She tried to shout but her mouth was pressed by him and he threatened to put broken bottle of Vodka into her vagina, if she raised any alarm. The victim pleaded before him to leave but he proclaimed that she could not do so unless he himself was fully satisfied. However, she managed to go to the washroom and pressed emergency button twice but no one came to help her. She further alleged that at that time, she recollected that Vishal Singh was also staying in the same hotel. She made a call to him, who immediately reached in the room, wherein she was present and on seeing him, the petitioner was frightened. He started apolizing and while touching her feet told her not to report the matter to the police.

3. It was further alleged that as the victim herself was student and did not want to involve herself in any controversy, she came back home without lodging any report to the police. However, the petitioner along with

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his friends had started extending threats to her and was trying to defame her and by using a girl, he had posted some vulgar videos pertaining to herself on YouTube and by making them viral. He had also been extending threats to kill her. On the basis of her complaint, initially a case under Sections 366 and 506 read with Section 34 of IPC was registered. Investigation proceedings were initiated. Statement of the victim under Section 164 Cr.P.C. was recorded, wherein she reiterated the allegations as made earlier by her. She was medico-legally examined. During investigation it was revealed that while booking the room in aforesaid hotel, a forged Aadhar Card had been used by the petitioner by morphing his photograph, on the basis of which, offences under Sections 467 and 468 of IPC were added. Investigation is going on. The petitioner had moved applications for grant of anticipatory bail before the Court of learned Additional Sessions Judge, which were dismissed.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. He is running a channel on YouTube in the name and style of Bhojiwood Entertainment and Broadcasts News Updates, Cinema Reviews, Interviews etc. related to Bhojpuri Cinema. It is argued that one Vishal Singh, who is the friend of a well known actor, was pressurizing him to publish some news in his favour but the petitioner did not do so, due to which, he had got offended and had extended threats to him to face dire consequences and to execute those threats, on 29.06.2023, he along with his accomplices had called the petitioner in aforesaid hotel for the purpose of shooting the interview, wherein the victim was also present with said Vishal Singh. During the time, lunch was offered to him and immediately

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thereafter, the said Vishal Singh along with some unknown persons had started extending beatings to him and compelled him to remove his shirt on the point of knife and he was made to do sit ups while holding his ears and to praise Vishal Singh as a superstar of Bhojpuri Cinema. It is submitted that the entire incident was video recorded by the said Vishal Singh and was uploaded on many channels. He also stated that he was got released only when the police had reached at the spot. Feeling aggrieved, he has lodged an FIR bearing 180 dated 03.07.2023, under Sections 120-B, 323, 342 and 506 of the IPC as against the victim, aforesaid Vishal Singh and their accomplices.

4. It is further submitted by learned counsel for the petitioner that since after lodging of the FIR, investigation was not being conducted in a proper manner, therefore, his brother had filed a written complaint to the Commissioner of Police and the petitioner had also made request before the concerned SHO to preserve the CCTV footage of the aforesaid hotel of the relevant date but his request was not acceded to. Rather, as a counter-blast, the instant FIR was got registered by the victim on totally false and frivolous allegations. It is submitted that he had joined investigation as per the orders of learned Additional Sessions Judge and was admitted to interim bail but the same was dismissed on the ground that he had not cooperated in investigation and had not got the Aadhar Card pertaining to Subhash Kumar recovered. It is further submitted that subsequently, even a compromise had been effected between the parties and the petitioner had filed a petition before this Court for quashing of the FIR, bearing CRM-M-47227-2023, but the same was dismissed as withdrawn on 19.09.2023. It is submitted that his custodial interrogation is not required as he had already joined the

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investigation. No recovery is to be effected from him as the alleged forged Aadhar Card was not prepared by him and in fact, it was Vishal Singh, who in connivance with the victim had got booked the room in the aforesaid hotel under the name of Subhash Kumar, therefore, there was no question of recovery of the same from him. With these broad submissions, it is prayed that the petitioner deserves to be given benefit of pre-arrest bail.

5. Status report has been filed by the respondent-State, as per which, the petitioner was directed to join investigation as per orders of learned Additional Sessions Judge but had not cooperated with the same and also had not provided forged Aadhar Card, on the strength of which, he had booked the room in the aforesaid hotel. It is also submitted that the custodial interrogation of the petitioner is required for thorough investigation of the matter and, therefore, it has been urged that the present petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have perused the material placed on record carefully.

7. The petitioner is alleged to have contacted the victim, who claims herself to be an actress of Bhojpuri Cinema, on 23.06.2023 on the pretext of taking her interview and is further alleged to have called her for interview in a hotel on 29.06.2023. As per the allegations made in the FIR and as recorded by the victim in her statement under Section 164 Cr.P.C., on 29.06.2023, on reaching the hotel, the petitioner had called her to a room, which was booked by him, and thereafter he had also reached there after sometime. He offered meals to her and thereafter himself consumed a bottle of Vodka. She further alleged that thereafter, he had pushed her on the bed and after removing her clothes, pressed her breasts and had inserted his

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fingers into her vagina, thereby committing rape upon her. She also made allegations that she was threatened that he would be inserting the broken bottle of Vodka into her, if she would resist. The allegations against the petitioner are quite serious in nature. As per medical reports, the possibility of the victim having been subjected to sexual assault cannot be ruled out. It cannot be denied that there is a delay of 20 days in lodging of FIR of this case and the petitioner had also lodged aforesaid FIR No. 180 on 03.07.2023 not only against the victim but also against aforesaid Vishal Singh and some other persons making allegations that it was in connivance with Vishal Singh that he was called in the said hotel and then, all of them had made him strip his clothes and was also made to do sit ups and to touch the feet of Vishal Singh but it is only after the evidence, which would be produced before the trial Court that it can be stated that as to whether the allegations as levelled in the instant FIR are true or not ? Keeping in view the nature of allegations, which have been levelled against the petitioner, the acts attributed to the petitioner and attendant facts and circumstances, I am of the considered opinion that the thorough investigation of the matter is required to elicit the truth, for which, custodial interrogation of the petitioner is must. Even otherwise, it is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. However, no such circumstance has been made out in this case. More so, it is equally well settled proposition of law that custodial interrogation of a suspected person is of tremendous advantage in disinterring many useful information. The custodial interrogation is qualitatively more elicitation oriented than questioning a suspect which is well ensconced with a favourable order under Section 438 of Cr.P.C.

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Accordingly, the present petition is dismissed.

7. However, it is made clear that nothing observed hereinabove shall be construed as an expression on the merits of the case as the same is only for the purpose of decing the present petition.

06.02.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No