

291 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-58470-2023
Date of decision: 1st March, 2024

Amit

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Nonish Kumar, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.
Mr. Ashwani Nagra, Advocate respondent No.2.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Police Station	Sections
374	Ram Nagar, District Karnal	354-C, 506, 509 of Indian Penal Code, 1860 (for short 'IPC') and (Section 66-E of IT Act added lateron)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the that the aforementioned FIR was registered on 20.10.2023, on the basis of statement recorded by complainant 'R' (name withheld) alleging therein that she got married with 'G' (name withheld) in the year 2017 and was having a son. On 23.10.2023, at about 2:00 PM, she was going to take bath in the bathroom after finishing her work, when the petitioner who is her brother-in-law (*jeth*), told her to let him use the bathroom first. On his asking, she left the bathroom. Sometime thereafter

when she went there and after taking bath, was about to leave the bathroom, when suddenly a mobile phone fell down from the place wherein she was keeping the soap. She found that the video camera of the said mobile was on and the said mobile belonged to the petitioner. On checking, she found that through the said mobile, her images/video while taking bath, were captured. She kept the mobile with her. Sometime thereafter, when the petitioner asked her about his mobile then she told him that she had seen the video. She alleged that instead of feeling apologetic, the petitioner started extended threats to kill her and abused her. On the basis of the statement and registration of the FIR, investigation proceedings have been initiated and are going on.

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. Infact, there is a dispute between the family of the complainant and himself and therefore, he has been falsely implicated in this case. The mobile phone of the petitioner infact had been taken by the complainant. He is ready to join the investigation. No recovery is to be effected from him. His custodial interrogation is not required. Therefore, it is argued that he deserves to be extended benefit of pre-arrest bail.

4. The petitioner was directed to join the investigation and as submitted by learned State counsel, he has joined the investigation on 19.01.2024.

5. The respondent No.2 had however, personally appeared on 28.02.2024 and has placed on record a compact disc (CD) showing the video which was stated to have been made by the petitioner from his mobile phone

while she was taking bath in her bathroom. The said CD has been perused by this Court which reveals the petitioner while placing/fixing his mobile in the bathroom in such a position that any person taking bath therein could be captured in the video recording made by such mobile and in same video, the victim is videographed while taking bath. The act and conduct of the petitioner *prima facie* appears to be quite deplorable because despite being real *jeth* (brother-in-law) of the victim, he captured the video of the victim while she was engaging in a private act i.e. taking bath, in circumstances, where she would usually have the expectation of not being observed by any person. The petitioner has joined the investigation on 19.01.2024 as informed by the respondent-State. The mobile phone containing objectionable video of the complainant has been handed over to the police. The custodial interrogation of the petitioner might not have been required anymore since he has joined the investigation. However, merely because of that fact, he cannot claim benefit of release of pre-arrest bail as a matter of right. The well settled proposition of law is that it is a misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. In '*Sumitha Pradeep Vs. Arun Kumar 2022(4) RCR (Criminal) 977*. The Hon'ble Supreme Court has observed so and further held that the first and foremost thing that a Court hearing of an anticipatory bail should consider is the *prima facie* case put up against the accused. The powers under Sections 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. The court is also required to see that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal

cases by the trial Court. At the time of deciding such application, the Court has to consider the nature of offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses as well as larger public interest. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstances 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.

[MANISHA BATRA]
JUDGE

1st March, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No