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IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-56198-2024 (O&M)
Date of Decision: 11.12.2024

SALAHUDDIN

...Petitioner

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankur Lal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

Mr. Arjun Dhingra, Advocate with
Mr. Kajal Chauhan, Advocate for the complainant.

HARPREET SINGH BRAR J. (Oral)

1.
- Instant petition is preferred under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) seeking anticipatory bail in FIR No.609 dated 21.10.2024 under Sections 376(2)(n) & 506 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Suraj Kund, Faridabad.
2.
- On 12.11.2024, following order was passed:

“Instant petition is preferred under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) seeking anticipatory bail in FIR No.609 dated 21.10.2024 under Sections 376(2)(n) & 506 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Suraj Kund, Faridabad.

Learned counsel for the petitioner, inter alia, contends that the factual ingredients breaching the threshold of Section 376 of IPC are not available and there is nothing on record to remotely suggest that the petitioner has obtained the consent of the prosecutrix under some misconception as provided under Section 90 of IPC. The prosecutrix was well aware that the petitioner is married and is having children of marriageable age. No date, time of place of any alleged forcible sexual intercourse has been mentioned in the FIR (supra). It is further contended that earlier also, on the same set of allegations, the



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prosecutrix made a complaint before the jurisdictional police authorities, however, later on, she withdrew her complaint. The prosecutrix, who is major and a matured lady, was in consensual relationship with the petitioner for long time.

Notice of motion.

On asking of the Court, Ms. Geeta Sharma, DAG, Haryana accepts notice on behalf of respondent No.1-State and Mr. Arjun Dhingra, Advocate accepts notice on behalf of respondent No.2 and files his Vakalatnama in the Court today, which is taken on record.

Learned counsel for respondent No.2 opposes the prayer for grant of anticipatory bail to the petitioner on the ground that from the very inception, the petitioner had the intention to cheat and to take advantage of the prosecutrix and he established physical relations with her on the pretext of marriage.

Adjourned to 11.12.2024.

*Keeping in view the ratio of law enunciated by the Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273, Arnab Manoranjan Goswami Vs. State of Maharashtra, (2021) 2 SCC 427, Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51, Siddharam Satlingappa Mhetre Vs. State of Maharashtra and ors., 2010 SCC OnLine SC 1375 and Shri Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565**, the petitioner is directed to appear before Investigating Officer within a period of two weeks from today and thereafter, as directed by the Investigating Officer. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing bail/surety bonds to the satisfaction of Investigating/Arresting Officer and the petitioner shall co-operate in the investigation. The petitioner shall cooperate with the investigation/Arresting Officer and abide by the conditions as provided under Section 482(2) of BNSS (erstwhile Section 438(2) of the Code of Criminal Procedure, 1973).*

If the Arresting Officer does not permit the petitioner to join the investigation, he would appear before learned Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in the investigation, in terms of the order of this Court.

Nothing observed hereinabove shall be construed as an expression of opinion by this Court and learned trial Court shall decide the same on its own merits, strictly in accordance with law.”

3. Learned State counsel on instructions from SI Saroj, submits that in compliance of order dated 12.11.2024 passed by this Court, the petitioner has joined the investigation and is not required for further custodial interrogation.
4. Keeping in view the statement made by learned State Counsel the order dated 12.11.2024, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 438(2) of Cr.P.C./482(2) of B.N.S.S.
5. The petition is accordingly disposed of.

11.12.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No