

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.62944 of 2023
Date of Decision: 07.03.2024

Aakash Kumar ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. M.D. Khan, Advocate,
for the petitioner.

Mr. Satjot Singh, AAG, Punjab,
for the respondent-State.

Mr. Kuldeep Singh Saini, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 438 of Cr.P.C. seeking grant of anticipatory bail in case bearing FIR No.0099 dated 14.08.2023 registered under Section 376 of IPC and Section 67 (A) of Information Technology Act, 2000 at Police Station City Anandpur Sahib, District Rupnagar.
2. Briefly stated, the aforementioned FIR was registered on 14.08.2023 on the basis of complaint lodged by the prosecutrix (name withheld) alleging therein that in the year 2020, she was studying in BA first year in a college at Anandpur Sahib and due to outbreak of Covid

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19, there was lockdown. Online classes were started by the college by forming group of different students. The present petitioner and co-accused who were members of her group, managed to procure her personal cell number and started sending messages on the pretext of exchanging study notes with her. Sometime thereafter, they sent her some lewd messages, due to which she blocked their number. On resumption of the classes, the petitioner and the co-accused apologized for their acts and assure to not to do so in future. The prosecutrix forgave them and gradually friendly and cordial relations were developed between them. She alleged that one particular day, while in college, the petitioner and the co-accused took her to college canteen wherein she was offered some cold drink on consuming which she felt dizziness and lost consciousness. When she regained the consciousness, she found herself lying in the vehicle of the accused Ankit Dahiya. On asking, they showed a video in which they were shown committing rape upon her. By extending threats that they would make her video viral if the incident was disclosed by her to anyone they kept on harassing and blackmailing and due to fear, she did not disclose anything to anybody.

3. As per the further allegations, after completing her education, the prosecutrix had shifted to Delhi in the year 2023 for making preparations for UPSC examination when the accused Ankit Dahiya managed to contact her and by forcibly procuring her address wherein she was living as a Paying Guest, he reached there and tried to commit rape upon her and also extended threats. She further alleged that he had been demanding an amount of Rs.50 lacs and otherwise threatened to upload her videos. During the course of

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investigation, the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. on 16.08.2023. The accused Ankit Dahiya was arrested on 15.08.2023. The petitioner had also filed an application for grant of anticipatory bail before the Court of learned Sessions Judge, Rupnagar but the same was dismissed.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. The FIR discloses that the allegation that the petitioner had committed rape upon the prosecutrix were pertaining to the year 2021. For these two years, she remained quiet and did not lodge any complaint as against the petitioner. The petitioner had never made any obscene video of the prosecutrix nor any threat had been extended by him. The statement of the prosecutrix proved that she was not even sure that she was even ravished by the petitioner or co-accused in the year 2021. Even she stated that the petitioner was not involved in ravishing her but had made her videos viral. It is further argued that the custodial interrogation of the petitioner is not required. He is ready to join the investigation and, therefore, it has been urged that he deserves to be extended benefit of pre arrest bail.

5. The respondent No.1-State has filed status report as per which, thorough investigation was conducted in the matter and the involvement of the co-accused Ankit Dahiya as well as the present petitioner in commission of the acts which were alleged by the prosecutrix was proved. The investigation agency had collected admission record of the prosecutrix, the petitioner as well as co-accused Ankit Dahiya from the college wherein they studied and also examined witnesses who were acquainted with the facts and circumstances of the case. The co-accused was arrested on 15.08.2023

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whereas the petitioner was avoiding his arrest. Learned State counsel has argued that there are serious allegations against the petitioner. For proper and thorough investigation of the matter, his custodial interrogation is must and hence has urged that the petition does not deserve to be allowed.

6. The respondent No.2-complainant/prosecutrix has also filed reply alleging therein that the petitioner was running a channel and in the month of January 2024, by changing the name of his channel as AL@ALYX STAR VIDEO MMS LEAKED, he had leaked the obscene video showing the prosecutrix and had then on 02.02.2024, he had posted the same obscene videos of the prosecutrix on his own channel DESI@VIDEOS2001 vide post No.433, video No.4. It is submitted that the petitioner had not only committed rape upon her but had also made her videos viral. Therefore, it is argued by learned counsel for the prosecutrix that the petitioner does not deserve the benefit of pre arrest bail.

7. I have learned counsel for the petitioner, respondent No.2-prosecutrix as well as learned State counsel and have gone through the record.

8. The petitioner is alleged to have committed rape upon the prosecutrix along with the accused during the period when she was doing her graduation in Anandpur Sahib and is further alleged to have kept on molesting and extending threats to her. Though in her statement recorded under Section 164 of Cr.P.C., the prosecutrix had undoubtedly stated that she was not sure that she was subjected to rape or not in the year 2021 and that the present petitioner had ravished her or not but had specifically stated that the petitioner was involved in making her videos and was also

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instrumental in making the same viral in connivance with the co-accused even recently in the month of January and February 2024. In the reply filed by her, she has reiterated the allegations as levelled in the FIR that rape was committed upon her by the petitioner as well as co-accused Ankit Dahiya and she has even disclosed the particular IDs/links from where her vulgar videos had been made viral. It is also the allegation against the petitioner that he runs a private channel of his own from where he is making these videos viral. The allegations against the petitioner are serious in nature. The purpose of coming to the conclusion that the videos belonging to the victim had been made viral by the petitioner by creating fake IDs, his custodial interrogation is must. The petitioner has annexed pen drive along with her reply and one video uploaded in the same is seen by this Court which as per the prosecutrix, is a video prepared by the petitioner by making manipulations and is fake one also. Some links have also been disclosed by her. It is only after conducting thorough investigation in the matter that the information that such videos had been made viral by the petitioner or not, can be disinterred. 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 and the likelihood of his influencing the course of investigation or tampering with evidence. The powers under Section 438 of Cr.P.C. are not to be exercised lightly and in a routine manner but are required to be exercised in extraordinary and exceptional circumstances. Custodial interrogation of a suspected person is obviously qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C.

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Keeping in view the nature of the allegations as levelled against the petitioner, I am of the considered opinion that his custodial interrogation is must and also that no exceptional circumstance has been made out in his favour to extend concession of pre arrest bail to him. Accordingly, the petition is dismissed.

07.03.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No