

CRM-M-10868 & 20326-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.203

Case No. : CRM-M-10868-2023

Date of Decision : May 12, 2023

[REDACTED]

.... Petitioner

vs.

State of Punjab

.... Respondent

Case No. : CRM-M-20326-2023

Date of Decision : May 12, 2023

[REDACTED]

.... Petitioner

vs.

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.**

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Present : Mr. Varun Chhibba, Advocate  
for the petitioner (in CRM-M-10868-2023).

Mr. Manmeet Singh Bindra, Advocate  
for the petitioner (in CRM-M-20326-2023).

Ms. Himani Arora, AAG, Punjab (in both the cases).

Mr. Harish Sharma, Advocate  
for the complainant (in both the cases).

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**GURBIR SINGH, J. :**

1. Vide this common order, two petitions i.e. CRM-M-10868-2023 and CRM-M-20326-2023 filed by two different persons, shall be disposed of as the FIR involved in both the petitions is the same, arising out of the same occurrence.

2. Prayer in both the afore-stated petitions, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioners in case FIR No.103

dated 19.07.2022, under Sections 67, 67-A of the Information Technology Act, 2000 (hereinafter referred to as – the Act), registered at Police Station Division No.3, Ludhiana.

3. The FIR in question was registered at the instance of one [REDACTED] against her husband [REDACTED] (petitioner in CRM-M-10868-2023) and [REDACTED] (petitioner in CRM-M-20326-2023).

4. As per the allegations, on 11.05.2022, the complainant received calls and messages on her mobile phone. When she saw the messages, she was shocked to see her obscene videos and objectionable photographs with her husband [REDACTED] on her Instagram ID by co-accused [REDACTED] which her husband had made by deceiving her with intention of blackmailing her from the very beginning. When she spoke to the petitioner [REDACTED], she began hurling abuses and threatening her. Earlier, the complainant had registered a police complaint against her husband and in-laws and owing to the same, the police registered an FIR under Sections 406, 498-A IPC at Police Station Women Cell, Ludhiana. In the said complaint, the complainant had also mentioned that [REDACTED] was having illicit relations with her husband [REDACTED] and her husband had given indecent videos and photographs of the complainant to [REDACTED], who was blackmailing her and threatening her.

5. Learned counsel for both the petitioners have argued that earlier inquiry was conducted before registration of the case. The Inquiry Officer had given finding that the said video was prepared by the complainant herself but after the registration of the FIR, the State changed its stand. Learned counsel for petitioner [REDACTED] further argued that the

petitioners neither published nor transmitted any such video to any person. Learned counsel for petitioner [REDACTED] has argued that the said video was neither published nor transmitted by her and as per the version of the prosecution, it was in the mobile phone of [REDACTED] from where it was sent. She has been unnecessarily dragged in due to matrimonial litigation between the complainant and [REDACTED]

6. It has further been argued that the maximum sentence for imprisonment is five years under Section 67-A of the Act but no notice was given to the petitioners under Section 41-A Cr.P.C., in view of the law laid down by Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar and another – Crl.Appeal No.1277 of 2014, decided on 02.07.2014.

7. The respondent-State has already filed Status Report in case of [REDACTED] and in case of [REDACTED] the same has been filed today in Court, which is ordered to be taken on record. Learned State counsel and counsel for complainant have submitted that the custodial interrogation of both the petitioners is necessary to recover the mobile phone, from which obscene video of the complainant was sent. It is further submitted that offence is heinous. So, petitioners are not entitled for anticipatory bail.

8. Learned counsel for both the petitioners have submitted that both the petitioners are ready to hand over their mobile phones to the Investigating Officer as and when they are required.

9. Heard.

10. Although at the time of pre-registration inquiry, the Inquiry Officer had found that obscene video of the complainant was prepared by herself, but after registration of the FIR, the Investigating Officer is of the

view that petitioner [REDACTED] has prepared the video and photographs on his own mobile in connivance with co-accused [REDACTED] Sections 67 and 67-A of the Act, under which the FIR has been registered, pertain to publishing or transmitting obscene material in electronic form or publishing or transmitting material containing sexually explicit act or conduct, in electronic form.

11. Notices were issued to the petitioners under Section 41-A Cr.P.C., but the petitioners failed to join investigation. But there is nothing on record that they were properly served.

12. Since the allegations against the petitioner [REDACTED] is that he prepared the obscene video and photographs of the complainant (his wife) and said video and photographs were circulated by petitioner [REDACTED] to the complainant's phone and it is not the case of the prosecution that the said photographs or video were circulated amongst the General Public, so, petitioners are entitled for grant of anticipatory bail.

13. Accordingly, both the petitioners are directed to join investigation and hand over their mobile phones and fully co-operate with the Investigating Officer. In the event of their arrest, the petitioners are ordered to be released on bail, to the satisfaction of the Investigating Officer/Arresting Officer, subject to the following conditions :-

*“1. that the petitioners shall make themselves available for interrogation by a police officer as and when required;*

*2. that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case*

*so as to dissuade him from disclosing such facts to the court or to any police officer;*

*3. that the petitioners shall not leave India without prior permission of the court;*

*4. that the petitioners shall also submit their Passports to the Investigating Officer;*

*5. that the petitioners shall give affidavits regarding their mobile numbers to the Investigating Officer and shall not change their mobile numbers during pendency of the case.”*

14. In case the petitioners do not co-operate or violate this order, then the prosecution is free to move application for cancellation of bail granted to the petitioners.

15. Both the petitions stand disposed of in the above terms.

16. A photocopy of this judgment be placed on the file of other connected matter.

**May 12, 2023**

*monika*

**(GURBIR SINGH)  
JUDGE**

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>