

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10136-2023 (O&M)
Date of Decision: 25.05.2023

BALWANT SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Chahit Bansal, Advocate
for the petitioner.

Mr. H.S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.0133, dated 24.09.2021, under Sections 67-B of Information Technology Act (in short "IT" Act) and Section 15 of Protection of Children from Sexual Offences Act, 2012 (in short "POCSO" Act), registered at Police Station Dhanaula, District Barnala.

2. Upon issuance of notice in this case, the status report dated 15.05.2023 by way of an affidavit of Sh. Satvir Singh, P.P.S., Deputy Superintendent of Police, Sub Division, Barnala has been filed on behalf of State of Punjab, which is already on record,

3. Briefly, on receipt of tipline from Ministry of Home Affairs, New Delhi, the matter was looked into by Deputy Superintendent of Police/Crime against Women, Barnala and report of District Attorney legal, Barnala was taken, wherein it was stated that facebook reported the cases of

uploading of videos containing child pornography by accused persons through facebook to National Center for Missing and Exploited Children (NCMEC), who further forwarded the same to authorities in India, which came to Barnala Police as Facebook IDs were created and videos were uploaded from Barnala. It was found that a child pornography had been uploaded from one facebook account named 'Dukhi Atma'. It was found that two mobile Nos. 6239395380 and 8699327193 had been used for making the facebook account, which were registered in the name of Balwant Singh S/o Bholu Singh (petitioner). During inquiry, Balwant Singh stated that he was using smartphone from about 4 to 5 years and he had created facebook account named 'Dukhi Atma' about 4-5 years ago. He further stated that he had not intentionally uploaded any video on facebook and it had been uploaded by mistake. Accordingly, the above said FIR was registered.

4. Apprehending his arrest in this case, the petitioner approached the Court of Sessions Judge, Barnala seeking grant of pre-arrest bail by filing an application, however, the same was declined by the learned Sessions Judge, Barnala, vide order dated 08.10.2021. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

5. Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case and he has no concern with the alleged crime. It is submitted that the mobile phone of petitioner got lost about 3-4 years ago prior to the alleged occurrence and some other person had committed this offence from the mobile phone of petitioner. It is contended that the petitioner had informed the said fact to police officials, however the police official asked him to make a statement that he did so due to mistake and he will be exonerated. It is submitted that since the petitioner was only 22 years old and was unaware of legal

consequences, accordingly. he made a statement under the impression that thereafter he will be set free. Learned counsel for the petitioner further submits no offence under Section 15 of POCSO Act is made out against the petitioner. It is further submitted that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

6. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. It is submitted that the custodial interrogation of the petitioner is required for recovering mobile phones used in crime, child pornography material out of which he had uploaded video at his facebook ID 'Dukhi Atma' and also to know about the modus operandi in committing such crime and to complete the investigation. Accordingly, prayer for dismissal of the petition has been made.

7. I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the State of Punjab.

8. In this case, on receipt of tipline from Ministry of Home Affairs, New Delhi, the matter was inquired into and it was found that child pornography had been uploaded from one facebook account named 'Dukhi Atma', which was created by using two mobile Nos. 6239395380 and 8699327193 and the said mobile nos. are stated to be registered in the name of Balwant Singh S/o Bhola Singh (petitioner). From the perusal of the paperbook as well as from the contentions of the petitioner, it is manifest that on one hand, the petitioner is stating that his mobile phone got lost about 3-4 years ago prior to alleged occurrence and some other person had

committed this offence from his mobile phone. On the other hand, it is contended that the petitioner had created facebook account named 'Dukhi Atma' about 4-5 years ago and he had not intentionally uploaded any video on facebook and it had been uploaded by mistake. It is submitted that the petitioner had made such statement under the impression that thereafter he will be set free. In my considered view both the afore-stated contentions are mutually destructive.

9. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine.

10. In *Adri Dharan Das v. State of W.B., 2005(4) SCC 303*, the Hon'ble Apex court held that ordinarily the courts will not interfere in the investigation of a crime or with arrest of an accused in a cognisable offence. It held that arrest was a part of process of investigation which enables the unraveling of the various facets crime including the motive, preparation and its commission. Arrest also leads to information leading to discovery of material facts.

11. In case of State represented by the *C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

12. Custodial interrogation of the petitioner is definitely required for complete and effective investigation to recover mobile phones used in crime, child pornography material out of which petitioner is alleged to have uploaded video at the facebook ID 'Dukhi Atma' and who all are involved in this crime. In case custodial interrogation of the petitioner is denied to the

investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

13. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.0133, dated 24.09.2021, under Sections 67-B of the IT Act and Section 15 of the POCSO Act, registered at Police Station Dhanaula, District Barnala; is dismissed.

14. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

15. All pending application/s, if any, shall also stand closed.

May 25th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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