

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-17663 of 2015 (O&M)
Date of decision:27.5.2015

Shiv Kumar

.....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Mr. Jagjit Singh, Advocate for the petitioner(s).

DARSHAN SINGH, J.

The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.') for grant of regular bail to petitioner-Shiv Kumar in case FIR No.45 dated 12.4.2015 under Sections 354-B, 509 read with Section 34 of the Indian Penal Code, 1860 (for short the 'IPC'), registered at Police Station Division No.2, Pathankot.

As per the prosecution case, on 5.4.2015 at about 10 A.M, the prosecutrix was standing on the gate of her house. The present petitioner along with his sons namely Ravi Kumar, Anu Kumar and his wife, namely, Sureshta Devi was standing on his roof. On seeing her, they started hurling abuses to her. Present petitioner Shiv Kumar did obscene acts by making the gesture with his hand and asked that he wanted to marry her. When the complainant

asked reason for such acts to the petitioner, he along with his co-accused came down. The petitioner caught hold of the complainant from her hands, pulled her towards him and torn her shirt. On her alarm, her husband Ashok Kumar was attracted. The petitioner and his co-accused also assaulted Ashok Kumar. The application of the petitioner for grant of anticipatory bail has been dismissed by the learned Additional Sessions Judge, Pathankot. Hence, this petition before this Court.

Initiating the arguments, learned counsel for the petitioner contended that the occurrence is alleged to have taken place on 5.4.2015 but the FIR has been got registered after seven days. There is no explanation for this delay. He further contended that in fact the wife of petitioner Sureshta Devi was assaulted and was medico legally examined on 5.4.2015. She had arrived in the hospital at about 10.10.A.M. Sureshta Devi has even moved an application to the Senior Superintendent of Police, Pathankot on the same day against Ashok Kumar, the husband of the prosecutrix. He contended that the present case has only been got registered against the petitioner and his family members as a counter blast. He further contended that the story of the prosecution is highly improbable. It is not believable that the petitioner will do such obscene acts in the presence of his wife and children. He further contended that Sureshta Devi, the wife of the petitioner, has also been named as an accused but she was already taken to hospital at 10:10 A.M, on 5.4.2015. Thus, he contended that the petitioner, who is aged about

60 years, has been falsely implicated and he deserves the benefit of anticipatory bail.

I have duly considered the aforesaid contentions.

It is settled principle of law that the anticipatory bail is an extraordinary privilege which can only be granted in exceptional cases. The contentions raised by the learned counsel for the petitioner touch the merits of the case and are based on factual matrix. The explanation regarding delay in lodging the FIR, as to whether the case in hand is a counter blast or not, similarly, the question regarding the presence of Sureshta Devi at the spot, are the disputed questions of fact which can only be ascertained on appreciation of the evidence. At this preliminary stage of deciding the application for anticipatory bail, no opinion on aforesaid matters can be expressed.

There are specific allegations against the present petitioner that he did obscene acts/gestures towards the prosecutrix. He caught hold her hands and pulled her towards him and even torn her clothes. In view of these specific allegations against the petitioner, he does not deserve the extraordinary privilege of the anticipatory bail.

Learned counsel for the petitioner has also pleaded that in view of the guidelines laid down by the Hon'ble Supreme Court in case **Arnesh Kumar versus State of Bihar and others, 2014(3) RCR (Criminal) 527**, the arrest of a person is not necessary. No doubt, the guidelines/directions issued by the Hon'ble Supreme Court

in **Arnesh Kumar's** case (supra) are to be complied with by the Investigating Agency during the investigation of the case and also by the Court when the accused is produced before it but in order to secure the concession of the anticipatory bail, the accused is required to make out the exceptional case to claim this extraordinary privilege which the petitioner in this case has failed to do so.

Thus, keeping in view my aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

May 27, 2015
ps

(DARSHAN SINGH)
JUDGE