

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-37650 of 2015

DATE OF DECISION: 19.01.2016

Rahul

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Navjeet Singh, Advocate
for the petitioner.

Ms. Neelam Kashyap, DAG, Haryana.

Mr. Abhimanyu Singh, Advocate
for the complainant.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 235 dated 23.9.2015 registered under Sections 363,366,376 IPC at Police Station Farrukhnagar, District Gurgaon.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case due to party faction in the village, whereas, he has nothing to do with the allegations. The complainant and petitioner belong to same village and caste and she wanted to marry with the petitioner but being in relation, the marriage could not be solemnized.

Learned counsel further contends that the complainant is a married lady and belongs to Scheduled Caste. She is in the habit of lodging false complaints of rape so as to compromise later on by extracting money. Earlier also she lodged a false FIR No. 182 dated 25.6.2014 under Sections 376, 313 IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 Act at Police Station Rajendera Park against one Ram Bhul @ Sonu, which was compromised later on. Similarly another complaint of outraging her modesty was also lodged against one Mahender to SHO Police Station Rajendera Park, Gurgaon. Learned counsel also contends that prior to lodging of the present FIR, the complainant had even moved an application before SHO, Mahila Police Station, Rewari, wherein, no allegation of rape was levelled. The matter was investigated by the police by calling relatives of both the parties to Mahila Police Station but nothing incriminating was found against the petitioner. It is also the submission of learned counsel that the present FIR is an afterthought and has been registered just to blackmail the petitioner. Moreover, there was delay of 9/10 months in lodging of the FIR, which shows that it is a case of false implication. It is also clear from the allegations levelled in the FIR that complainant had herself left her house with petitioner and lived/travelled at different places and thereafter the complaint was made. Nothing is to be recovered from the petitioner and he is ready to join the investigation.

Learned counsel for the complainant submits that the victim remained with the petitioner as an assurance to marry with her was given but the rape was committed upon her. Earlier the victim was married at the age of 17 without her consent but she did not cohabit with her earlier husband as she never went to her in-laws house.

Learned counsel for the respondent-State submits that the

petitioner does not deserve the concession of anticipatory bail as rape was committed upon the victim on giving an assurance to solemnize marriage but subsequently he backed out from his promise. Learned State counsel also submits that a wrong averment has been made that many complaints were made by the victim, whereas, no such complaint was ever made by her.

Heard the arguments advanced by learned counsel for the parties and have also gone through the allegations levelled in the FIR and other documents available on the file.

As per allegations levelled in the FIR, a complaint was made by the victim stating therein that the petitioner had told her that nobody is going to marry her because rape has been committed upon her and assured to marry her. Upon this assurance, both of them remained in a rented accommodation but after sometime she was given beatings and rape was committed upon her against her wishes. The rape was committed on giving false promise of marriage and thereafter she was harassed also. The only argument which has been raised by learned counsel for the petitioner is that the victim is in the habit of making of false complaints to blackmail the persons. Neither learned counsel for the petitioner nor State has brought to the notice of this Court any complaint made by the victim except the averment made in the FIR that earlier her child marriage was performed but she never joined the company of her husband.

During the course of arguments of the case, it has been brought to the notice of the Court that a written complaint was made against the victim to Commissioner of Police, Gurgaon, District Gurgaon, duly signed by many villagers stating therein that the victim is in the habit of making false complaints against the young persons just to harass them

with the help of her parents. She is of bad character and is spoiling the atmosphere of the village.

Since it is a case of anticipatory bail, it cannot be said at this stage as to whether any complaint made by the complainant is false or not. It has also been argued that the petitioner and complainant are closely related and could not be married to each other. All these allegations are matter of evidence and can be considered during trial.

For grant of anticipatory bail, the nature, gravity of offence as well as role of the accused is to be seen. There are certain factors, which are to be considered while granting bail under Section 438 Cr.P.C. Hon'ble the Apex Court in a judgment rendered in **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another** 2015 (8) JT 125 has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused

must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is

willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In view of the facts as mentioned above and the allegations

levelled in the FIR, the petitioner is not entitled for grant of anticipatory bail as in case he is released, he may try to influence the witnesses. Moreover, serious allegations are there against the petitioner. Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

January 19, 2016
pooja

(DAYA CHAUDHARY)
JUDGE