

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-39293 of 2015

DATE OF DECISION: 09.02.2016

Hani

.....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)**
2. **To be referred to reporters or not? (Yes)**
3. **Whether the judgment should be reported in the Digest? (Yes)**

Present:- Mr. Sajjan Singh Malik, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG, Haryana.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No. 619 dated 13.11.2014 registered under Sections 376,366-A,506,120-B IPC at Police Station Camp Palwal, District Palwal.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the case, whereas, he was not involved. There was delay of one month in lodging of the FIR as the incident occurred on 17.10.2014 and the FIR was registered on 13.11.2014. Learned counsel further contends that the prosecutrix has stated that one Hani has committed rape upon her, whereas, name of the petitioner is

Jitender @ Anni and he is not even residing at the address mentioned in the FIR. As per the allegations levelled in the FIR and the statement of the prosecutrix recorded under Section 164 Cr.P.C., the accused was known to her but still the name was mentioned wrongly and while declining bail to the petitioner these facts have not been considered. There was considerable improvement in the statement recorded under Section 164 Cr.P.C. The petitioner is ready to join the investigation and nothing is to be recovered from him.

Learned counsel for the respondent-State submits that the petitioner has been declared proclaimed offender vide order dated 3.2.2016 and being proclaimed offender, he is not entitled for anticipatory bail.

Heard the arguments advanced by learned counsel for the parties and have also gone through the allegations levelled in the FIR.

The prosecutrix is 15 years of age and specific allegations are levelled against the petitioner for committing rape upon her. Only on the ground that the petitioner is also known by the name of Anni, whereas, Hani is mentioned in the FIR, anticipatory bail cannot be granted to him. As per allegations in the FIR, the prosecutrix went to toilet and was falsely intimated that she was being called by her brother. Believing the same to be true, the prosecutrix went there whereupon her mouth was shut and she was put in a car, which was being driven by other person whose name was not known to the prosecutrix. The prosecutrix was then taken in a jungle where she was locked in a room and rape was committed upon her. The petitioner has specifically been named by the complainant in the FIR. It is also alleged that the accused persons also threatened to kill the prosecutrix and her brother. Co-accused-Hukam has already been arrested and is facing trial. The present petitioner is main accused and has also

been declared as proclaimed offender.

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 plentitude 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.

Keeping in view the specific allegations, nature of offence and also the fact that the petitioner is a proclaimed offender, no ground is made out to grant anticipatory bail to him and the petition being devoid of any merit is hereby dismissed.

February 09, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

