

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16842-2018

Date of decision : 24.4.2018

Sonu

... Petitioner

VERSUS

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amit Jaiswal, Advocate,
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

Mr. K.S.Lakhanpal, Advocate,
for the complainant.

RAJ SHEKHAR ATTRI, J.(Oral)

Notice of motion.

On the asking of this Court, Mr. Brijesh Sharma, AAG, Haryana, who is present in Court, accepts notice on behalf of the State.

It is the case of the prosecution that Simarjeet Kaur was married with deceased Naresh Kumar. She had illicit relations with present petitioner-Sonu. Both were found in compromising position by the complainant. Although a *Panchayat* was convened, yet both of them did not resist. It caused a mental agony in the mind of the deceased. Ultimately, he committed suicide. After his death, FIR was lodged by his mother.

I have heard the learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has placed reliance upon

Karnataka; 2017 (1) RCR (Criminal) 60. He has also relied on judgment of of this Court reported as **State of Punjab v. Kamaljit Kaur alias Bholi and another; 2008 (2) RCR (Criminal) 562** and **Saroj v. State of Haryana; 2011 (22) RCR (Criminal) 887.**

This Court has gone through the rival contentions. Abetment is constituted by :

- (1) instigating a person to commit an offence, or
- (2) engaging in a conspiracy to commit it; or
- (3) intentionally aiding a person to commit it.

Thus, the term, 'instigation' as used under Section 306 IPC amounts to intentional instigation.

In the case in hand, petitioner Sonu was found in compromising position with the wife of the deceased. In spite of convening a Panchayat, he did not resist. It amounts to instigation to the deceased.

The remedy of anticipatory bail is extraordinary and should be used in exceptional cases. The Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra and others** 2011 AIR (SC) 312 pleased to issue the following parameters:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. 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;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring

or humiliating the applicant by arresting him or her.

- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. 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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. 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.”

To the mind of this Court, no case is made out for grant of anticipatory bail.

Accordingly, the present petition stands dismissed.

April 24, 2018

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No