

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

CRM-M-546-2019 (O&M)

Date of decision: 12.6.2019

Shivam Arora

... Petitioner(s)

VERSUS

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Ms. Isha Goyal, Advocate.
for the petitioner.

Ms. Anu Chatrath, Addl. AG, Punjab.

RAJ SHEKHAR ATTRI, J. (Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.155 dated 1.9.2018 registered for the offences punishable under Sections 376, 420 of Indian Penal Code, at Police Station Dinanagar, District Gurdaspur.

Heard.

The allegations have been levelled against the petitioner with regard to committing rape. It is alleged in the FIR that the petitioner had sent a friendship request on the facebook which was accepted by the prosecutrix and both of them started chatting and meeting each other. Subsequently, the prosecutrix was subjected to sexual intercourse on the pretext of solemnization of marriage. Even the nude photographs of the prosecutrix are in possession of the petitioner.

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.”

Keeping in view the above, custodial interrogation of the petitioner is necessary and he cannot be allowed the benefit of pre-arrest bail.

Dismissed.

June 12, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

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