

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

CRM-M-13698-2019

Date of decision: April 11, 2019

Gurjit Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Ms. Jasneet Mehra, Advocate
for the petitioner.

Mr. V.G. Jauhar, Senior DAG, Punjab.

Mr. Vivek Salathia, Advocate
for the complainant.

RAJ SHEKHAR ATTRI, J.(ORAL)

Petitioner has preferred the instant petition under Section 438 Cr.P.C., for grant of anticipatory bail in case FIR No.31 dated 23.02.2019, registered under Sections 354, 506 of the Indian Penal Code (for short 'IPC') and Section 8 of Protection of Children from Sexual Offence, Act, 2012, at Police Station Majitha Amritsar, District Amritsar Rural.

Learned State counsel has placed on record photocopy of the statement of the minor prosecutrix under Section 164 Cr.P.C.

A bare perusal of the report reveals that prosecutrix is aged about 6 years, and was taken away by the petitioner. He removed her clothes and started kissing her private parts and touched her anus therewith.

The application of bail was dismissed only on the ground

that the allegations are made out under Section 375 IPC of rape.

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

Learned counsel for the petitioner has vehemently contended that there was a money transaction between the father of the prosecutrix and the petitioner as petitioner has advanced a sum of Rs.3,00,000/- to him in December, 2018. To substantiate this plea, he has placed on record photocopy of the bank statement (Annexure P-2), which shows transpires that petitioner has withdrawn an amount of Rs.3,00,000/- from his bank account.

Further, reliance has been placed upon the writing in the shape of *majornama* which has been submitted by the neighbours and the persons of the adjoining areas stated that petitioner has been falsely implicated in this case and there was only money dispute.

Learned State counsel while refuting all these arguments has submitted that there is no document if any money was transferred by the petitioner.

I have given thoughtful considerations to the rival contentions made by learned counsel for the parties.

After amendment by way of Act No.13 of 2013, the scope of rape under the provisions of Section 375 IPC has been extended. This section reads as under:-

“375. Rape-A man is said to commit “rape” if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to

cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

xxx

xxx

xxx

xxx

The minor prosecutrix has stated that petitioner had put off her underwear, then kissed her private parts and touched her private part with his male organ. This allegations certainly amount to rape upon the prosecutrix under the provisions of Section 375 IPC.

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

“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 facts and circumstances of the case and seriousness of the offence, this court is of the view that petitioner is not entitled to the concession of anticipatory bail.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

April 11, 2019
mamta

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