

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

CRM-M-34397-2018

Date of decision: February 20, 2019

Kuldeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Suresh Singla, Advocate
for the petitioner.

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

Mr. Munish Garg, Advocate
for the complainant.

RAJ SHEKHAR ATTRI, J.(ORAL)

Through the instant petition preferred under Section 438 of Code of Criminal Procedure, petitioner has sought anticipatory bail in case bearing FIR No.75 dated 21.04.2018, under Sections 452, 376, 506 of the Indian Penal Code (for short 'IPC'), registered at Police Station Talwandi Sabo, District Bathinda.

Although the principle '*bail is a rule and jail is an exception*' exists yet keeping in view the allegations levelled against the petitioner, he is not entitled for bail.

It is alleged that the petitioner armed with a knife entered into the house of the prosecutrix, finding her alone, he closed the door and threatened her to kill her minor child and committed rape upon her.

The remedy of anticipatory bail is extraordinary 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 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.”

It has been argued that now compromise has been effected but to the mind of this court, offence under Section 376 IPC is not compoundable, therefore, petitioner is not entitled to the concession of anticipatory bail.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

February 20, 2019
m. sharma

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