

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

CRM-M-61608-2018

Date of decision: March 05, 2019

Avtar Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Nipun Gupta, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.

Through the instant petition preferred under Section 438 of Code of Criminal Procedure, petitioner has sought anticipatory bail in case bearing FIR No.218 dated 14.11.2018, under Section 377 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 498-A and 323 IPC added vide order dated 31.01.2018, registered at Police Station Canal Colony, Bathinda, District Bathinda.

None has put in appearance on behalf of respondent No.2 despite service.

The allegations levelled against the petitioner are that he committed unnatural offences on various occasions upon the complainant.

Learned State counsel, on instructions from ASI Dharam Singh, submitted that the complainant was subjected to medical examination which *prima facie* affirms the commission of crime. Although, petitioner is the husband of the complainant yet no license is given to him to commit unnatural offence. The matter is of the serious nature. Apart from it, there are allegations for treating her with cruelty.

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, this court is of the view that in this case the medical examination of the complainant as well as custodial interrogation of the petitioner is necessary.

No case is made out to grant the concession of anticipatory bail to the petitioner at this stage.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

March 05, 2019
m. sharma

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