

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

CRM-M No.25175 of 2020
DATE OF DECISION : 31st AUGUST, 2020

Arshdeep Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present: Mr. Abhimanyu Batra, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.157 dated 09.07.2020 registered under Sections 363, 366, 376-D, 328, 451, 120-B & 506 IPC and Section 3, 4 & 6 of Prevention of Children from Sexual Act, 2012 at Police Station Sadar Sri Muktsar Sahib.

The allegations in the FIR, alleged by the prosecutrix, are that she was 17½ years old and was studying in 10+2. On 07/08 July, 2020 the present petitioner along with some other persons scaled the wall of the house of the prosecutrix and entered her house. After entering the house the petitioner and his accomplice intoxicated the family members and thereafter they picked up the prosecutrix. The prosecutrix was also administered some intoxicant. She was taken towards Tanda Sahib. However, thereafter, she is not aware as to where, how and exactly at what place she was taken. Thereafter the petitioner and his co-accused committed rape upon the prosecutrix. They threatened to kill her.

Ultimately they threw her in front of the house of her *Massi* in District Hoshiarpur. She informed the family members of the prosecutrix, who brought her from the house of *Massi*.

Arguing the case of the petitioner the learned counsel has submitted that the case against the petitioner is totally concocted. The prosecutrix has not even been medically examined to find out whether any rape has been committed upon her or not. Still further, it is submitted that the arrest of the petitioner would not help in the interrogation at all. The petitioner would join the investigation. Still further, it is submitted that the co-accused of the petitioner have already been granted anticipatory bail by this court.

Notice of motion.

Mr. Ajay Pal Singh Gill, DAG, Punjab, accepts notice on behalf of the State and Mr. B.S. Mittal, Advocate put in appearance on behalf of the complainant.

Learned State counsel, being instructed by ASI Navneet Kaur, submits that there are specific allegations against the petitioner. Even in her statement, recorded under Section 164 Cr.P.C., the prosecutrix has levelled specific allegations against the petitioner. It is further submitted that earlier also the petitioner had molested the same girl and on that count, earlier also an FIR was got registered against the present petitioner. However, the family of the girl, somehow, compromised the matter and the FIR was quashed on the basis of the compromise between the parties. But, once again the petitioner has indulged in the same heinous activity. Hence, the petitioner does not deserve concession of anticipatory bail.

Learned counsel for the complainant also submitted that the prosecutrix is a minor. The petitioner had earlier also molested the prosecutrix. Fearing about the bad reputation of the family and the future prospects of the prosecutrix, the family had compromised the matter with the petitioner. However, thereafter, also the petitioner had been again indulging in the similar activities and, ultimately, committed the heinous crime of rape upon the prosecutrix. Hence, the petitioner should not be granted concession of anticipatory bail.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, this court finds that the prosecutrix is minor by age. The record of the case also shows that earlier also the petitioner was alleged to have committed similar thing. The family of the girl might have given-in to social pressure or, as submitted by the counsel for the complainant, might have tried to save the honour of the family at that time. Accordingly, the matter was compromised and the earlier FIR was got quashed. However, once again the petitioner is alleged to have indulged in crime of rape. There are specific allegations against the petitioner. Not only this, even in the statement recorded under Section 164 Cr.P.C, the prosecutrix has levelled specific allegations against the petitioner. Hence, this court does not find any extenuating circumstance showing *ex-facie* innocence on the part of the petitioner *vis-à-vis* the allegation levelled against him. Hence, this court is not inclined to grant the petitioner protection against his arrest. Still further, since the petitioner has; allegedly, repeatedly indulged in the forcible instances with the girl, therefore, the police may require custodial interrogation of the petitioner to unearth the true dimensions of his crime. Hence, the grant of anticipatory bail to the petitioner would hamper the free and fair investigation as well.

Although the petitioner has relied upon the anticipatory bail granted to the co-accused, however, this court finds that the allegations against the petitioner are more serious; and he is alleged to have repeated the same conduct despite having; earlier; got the FIR quashed. Therefore, this court does not find any parity between the petitioner and the co-accused.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

31st AUGUST, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>