

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

**CRM-M-29631-2020
Date of decision: 18.11.2020**

Sunil

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Pawan Kumar Hooda, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Ram Pal Verma, Advocate
for respondent No.2/complainant.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No. 480 dated 08.08.2020, registered under Sections 323, 376, 406, 498-A, 506 and 511 of the IPC at Police Station Samalkha, District Panipat.

The operative part of the order dated 25.09.2020, vide which the petitioner has been granted interim bail, is reproduced below:

“Learned counsel for the petitioner submits that petitioner is the brother-in-law (husband's younger brother) of the complainant and as per the allegations in the FIR, the marriage between complainant and Deepak Kumar was performed on 08.03.2019, in which sufficient dowry articles were given, however, husband Deepak Kumar and in-laws were not satisfied with the same and they started demanding more dowry like car, motorcycle etc. It is further stated in the FIR that petitioner used to harass the victim and on 24.05.2019, when the complainant, was present in her room, the petitioner

forcibly entered into her room and caught hold of her from the backside and started imposing himself with a bad intention and also started pressing her breasts. When the complainant protested, she was given beatings. Later on, the complainant was turned out of the house with a demand of Rs. 5 Lakh in cash or a car in dowry. On 07.07.2019, a Panchayat was convened by the parents of the complainant, however, no settlement could be arrived at between the parties, therefore, a complaint was given by the complainant to Women Cell, Samalkha on 03.01.2020 but no action was taken. Consequently, the complainant made a complaint to S.P., Panipat, on which, the present FIR was registered on 08.08.2020.

Learned counsel has referred to an order dated 01.09.2020, vide which, father-in-law, mother-in-law and sister-in-law of the complainant were granted concession of interim anticipatory bail by the Additional Sessions Judge (Fast Track Court), Panipat.

Learned counsel has further referred to another order dated 18.09.2020, vide which, husband of the complainant, namely Deepak Kumar, has also been granted concession of interim anticipatory bail by the Additional Sessions Judge (Fast Track Court), Panipat. The operative part of the order reads as under:

“The allegations of attempt to commit rape are not against the petitioner. Bail application has been opposed simply on the ground that the investigation is pending. Accordingly, the petitioner is admitted to interim bail and petitioner is directed to join investigation as and when called by the Investigating Officer. Status report regarding his joining the investigation be submitted on 21.09.2020. Till then, in case of his arrest, petitioner be admitted to interim bail to the satisfaction of Investigating Officer/Arresting Officer.”

Learned counsel for the petitioner further submits that concession of interim anticipatory bail has been

granted to aforesaid co-accused, however, the same Presiding Officer has declined to grant anticipatory bail to the petitioner on the premise that complainant, in her statement recorded under Section 164 Cr.P.C., has reiterated her stand and, therefore, there are allegations of attempt to commit rape against the petitioner.

Learned counsel has further argued that as per the version given in the FIR, the incident pertains to 24.05.2019 and the complainant stayed with her husband even thereafter.

It is further submitted that there is a reference of 07.07.2019 in the FIR that the parents of the complainant convened a Panchayat, wherein the accused refused to keep the complainant without giving adequate dowry, however, in this Panchayat, the allegations levelled against the petitioner were not stated before any of the members of the Panchayat.

Learned counsel further submits that there is another reference in the FIR that on 03.01.2020, she has given a complaint to SHO, Women Cell, Samalkha but no action was taken and thereafter, she gave another complaint to S.P., Panipat, on which, the present FIR was registered.

Learned counsel further argues that a bare perusal of the FIR would show that no offence under Section 376 IPC is made out and at the most, it will be a case under Section 354 IPC.

Learned counsel lastly argues that main dispute of the complainant is with her husband Deepak Kumar and the petitioner is separate in mess from him and the husband has been granted concession of interim anticipatory bail, whereas the petitioner has been declined.

Notice of motion.

Mr. Sumit Jain, Addl. A.G., Haryana, who is also appearing through video conferencing, accepts notice on

behalf of the respondent-State and seeks some time to address arguments.

List again on 18.11.2020.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

The Superintendent of Police, Panipat is directed to file a specific affidavit as to how the present FIR has been registered under Section 376 IPC read with Section 511 IPC keeping in view the allegations in the FIR.

The Additional Sessions Judge (Fast Track Court), Panipat is also directed to submit an explanation as to how the main accused, i.e. husband Deepak Kumar, has been granted bail without reference to allegations of entrustment and demand of dowry against him just by escaping all these allegations and observing that allegation of attempt to commit rape is not against him (Deepak Kumar), which otherwise cannot be against accused Deeapk Kumar, being husband of the complainant, whereas the same concession has been declined to petitioner, who is the brother-in-law of the complainant. Therefore, order dated 18.09.2020 does not meet the requirement/criteria of granting the anticipatory bail as neither the wife/complainant was called by the Court nor her interest was safeguarded while passing the said order.

The explanation be sent to this Court on or before the next date of hearing.”

Learned counsel for the petitioner submits that the petitioner, in pursuance to the order dated 25.09.2020, has already appeared before the

SHO/Investigating Officer and has joined the investigation.

Learned counsel for the State, on instructions from the Investigating Officer, has not disputed the factual position and submits that the petitioner has joined the investigation and is no more required for any further investigation. However, learned counsel for the complainant has submitted that there are serious allegations against the petitioner.

A separate affidavit of the Superintendent of Police, Panipat has also been filed in Court today, in which it is stated that based upon the statement made by the complainant/victim before the Medical Officer on 10.08.2020, wherein she made statement that no act of rape was committed, rather an attempt was made, Section 376 IPC read with 511 IPC was deleted and Section 354 IPC was added.

In pursuance to order dated 25.09.2020, the Additional Sessions Judge (Fast Track Court), Panipat has submitted his explanation, which is on record.

The Additional Sessions Judge (Fast Track Court), Panipat has given an explanation that the error was committed due to a *bona fide* and inadvertent mistake and has also submitted his unconditional apology for the same.

The apology is accepted and no further action is called for.

After hearing learned counsel for the parties, without expressing any opinion on the merits of the case, considering the facts and circumstances of the case as well as after going through the affidavit of the Superintendent of Police, Panipat, wherein it is stated that as per the statement of the victim and medical report, no case under Section 376 IPC is made out and the same stands deleted and Section 354 IPC has been added

subsequently, the present petition is allowed and the interim bail granted to the petitioner, vide order dated 25.09.2020, is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

18.11.2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>