

CRM-M-36799-2020 (O&M)

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

**CRM-M-36799-2020 (O&M).
Decided on: November 12, 2020.**

Varinder Pal Singh @ V.P. Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.R.S.Cheema, Sr. Advocate, with
Mr.K.S.Nalwa, Advocate,
for the petitioner.**

Ms.Monika Jalota, DAG, Punjab.

**Ms.Reeta Kohli, Sr. Advocate, with
Mr.Ivan Singh Khosa, Advocate,
for the complainant.**

JASGURPREET SINGH PURI, J. (ORAL)

The present case has been heard through video
conference.

This is a petition filed under Section 438 Cr.P.C.
for the grant of pre-arrest/anticipatory bail to the petitioner in case
FIR No.0159 dated 10.10.2020, under Sections 354, 354-A, 506

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and 509 IPC and Section 67-A of the Information Technology Act, 2000 (Sections 376/511 and 342 IPC added later on on 13.10.2020), registered at Police Station, Kulgari, District Ferozepur.

FIR in the present case was lodged on the basis of a complaint given by the complainant to the Punjab State Women Commission dated 18.8.2020. Earlier the complainant had filed a complaint on 27.7.2020 to the DGP, Punjab, against the petitioner by making allegations of calling her and sending romantic/obscene messages on whatsapp to her and how she came across the petitioner in the month of February 2020 in relation to a dispute with the brother-in-law of the complainant and that the petitioner promised her to arrange a job for her and various other allegations have been made in the application. Thereafter another complaint was made to the Punjab State Women Commission on 18.8.2020, which has formed the basis of the present FIR.

As per the FIR, the complainant stated that she had submitted one application against her brother-in-law namely Gurwinder Singh son of Bohar Singh which was marked to the Economic Offences Wing, Ferozepur and the inquiry of the said application was conducted by the ASI of the Economic Offences

Wing, Ferozepur and the said inquiry was approved by the SHO, Incharge, Economic Offences Wing, Ferozepur who recommended the registration of FIR against the petitioner and subsequently the same was sent to the SP (HQ). Thereafter, the said SHO Ravi Kumar asked her that if she wanted action to be taken on the said application then she should meet the petitioner as he is very close to the SP (Detective), Ferozepur. The said SHO called her on mobile phone and asked her to come to the house of the petitioner and after receiving the phone call from him, she went to the house of the petitioner on 23.2.2020 where she met the petitioner and told him about her work where he made phone call to the aforesaid SP (Detective) and told him regarding the work and that the SP (D) told him that he had already prepared a report against her. Thereafter, the petitioner told her that he will again get the inquiry of the above said application marked by SSP, Ferozepur and then will get it cleared in her favour. Petitioner also told her that if her in-laws family had been residing in India instead of foreign country then he should have got them eliminated from the gangsters as he is having links with gangsters. Thereafter, the petitioner took her mobile number from her and started sending messages from his mobile phone and also told her that he would

always make a whatsapp call to her and that she should also call him on whatsapp only and not to make simple call. Thereafter, he asked from her regarding her educational qualifications and she told her that she is not having any job and he told her that he is having high links and owner of Genesis Dental College is his good friend and told her to join the aforesaid Dental College situated on Moga Road, Ferozepur. She joined the service in said Dental College on 25.2.2020 and started teaching the students and thereafter on the same day, the aforesaid SHO Ravi Kumar made a phone call to her by saying that the petitioner had arranged a job for her and therefore, she should also go to his house and thank him. He also told her to give application to the petitioner for re-inquiry on her application through SSP, Ferozepur. In the evening of the same day, she went to the house of the petitioner and thanked him and also handed over to him a new application addressed to the SSP, Ferozepur for reinquiry in her case. Thereafter, the petitioner told her that due to COVID-19 period, the SSP is very busy and it will take time for getting the application marked for conducting the inquiry. Since she believed upon him, he started sending whatsapp and romantic messages from mobile phones and through whatsapp calls started indecent

and vulgar talks with her. On this, she got suspicious about his evil intentions and started preserving all the whatsapp messages and also started preserving his calls. Thereafter, the petitioner crossed all limits in his vulgar talking and later on she started ignoring his phone calls. Thereafter on 23.3.2020, she had received a call from the Principal of the aforesaid Dental College that due to COVID – 19, the college is being closed, the teachers would give online lectures to the students and thereafter she started giving online lectures to the students. Thereafter, in the last week of June 2020, the petitioner told her that he had talked to the SSP, regarding reconducting of inquiry in her case and therefore, he asked her to come to his house at Moga Road for having a direct discussion about the matter on which call she went to his house and she was not aware that at that time he was alone in his house. He told her that he will get her work done from the SSP, Ferozepur but for this purpose she will have to establish physical relations with him and he forcibly caught her breasts and started touching her private parts and started enforcing himself upon her forcibly. When she objected to the same and raised noise, he detained her in his house without her consent and threatened to kill her with his revolver. He also snatched her mobile and deleted all the messages and whatsapp

calls made by him in which he had used very vulgar language. When she raised noise loudly, he released her with the threats that he is having links with the senior police officials besides having links with big gangsters and in case she would disclose about it to anyone, then he will get her killed from gangsters or get her or her family members implicated in false cases. Later on, he got her fired from her job in Genesis Dental College. It is further stated in the FIR that she came under immense mental stress and remained silent keeping in view the prestige of her parents but when she shared all the above said incidents with her parents, they encouraged her and now after coming out from the mental shock, she has disclosed all the misdeeds committed by the petitioner through the present application. It is also stated by her that earlier also she had submitted an application before the DGP, Punjab, Chandigarh, which was marked to DIG, Ferozepur range who constituted a Special Investigation Team (SIT) in which she got her statement recorded and also submitted the proofs in support thereof but till date no action against the accused has been taken. She further stated that now the above said accused has also started threatening her and pressurising her to withdraw the application and threatening her that he will get her killed and project it as an

accident. She further stated that in future, if any mishappening occurs with her or to her property then the above said accused shall be responsible for the same. She also enclosed the screen shots and call records and whatsapp messages/calls sent by the petitioner from his mobile phone along with the complaint.

On the basis of the aforesaid FIR, a SIT was again constituted and the said SIT in its conclusion report concluded that it inquired the matter by recording the statements of the concerned persons and taking into consideration the relevant record and the report sent by the Director Di-Tack State Cyber Crime Cell, Punjab, it was found that in the month of February 2020, applicant went to the house of the petitioner for taking action on the application moved by her against Gurwinder Singh but on coming to know about the filing of the application, the petitioner took her mobile number for informing her about reinquiry in the application and thereafter, started sending messages on whatsapp to her. After some time, he continued talking vulgar and sending obscene messages through whatsapp. When the complainant got suspicious, she started recording the talks of the petitioner and preserving the screen shots of the whatsapp messages. The said fact was confirmed by Director Di-Tack State Cyber Crime Cell, Punjab,

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after going through the record/documents and matter contained in the Pen Drive. Said Pen Drive consisted of eight audio recording clips and on hearing them, one thing gets proved that the petitioner during conversation with the complainant talked about his reputation, high links and social approach and unsocial, obscene comments of different types towards the ladies and instigated her for having sex and also talked about for not taking action against him as he is having high links and influence. The conclusion report further recorded that apart from furnishing a duly sworn affidavit and giving statement in support of allegations levelled by her against petitioner that in the last week of June 2020, petitioner called her in his house for the discussion about reinquiry on her application, for making physical relations, for catching the breasts of the applicant and for touching her private parts and for detaining her by him in his house and for giving threats to kill her with his revolver and for deleting the messages/chat from her mobile, applicant could not furnish any other witness or evidence, which could prove her allegations and therefore, it is not possible to make any specific comment on these allegations. The conclusion further stated that along with the application, the complainant had attached some screen shots of whatsapp messages sent by the petitioner

from his mobile phone on her mobile phone. The said screen shots tally with the screen shots sent by Director Di-Tack State Cyber Crime Cell, Punjab and from the inquiry conducted by the duly constituted Special Investigating Team, it was found that petitioner used filthy language towards complainant which is against the dignity of women. Since the matter is related to dignity of women, which is sensitive in nature, therefore, the opinion of legal experts of the range be obtained after forming a panel.

After the aforesaid conclusion made by the SIT on 14.9.2020, the matter was sent for legal opinion as suggested by the SIT. The members of the legal panel opined vide reported dated 2.10.2020 that in view of judgment of Hon'ble the Supreme Court in Lalita Kumari Vs. Government of U.P., an FIR should be registered against the petitioner under Sections 342, 376/511, 354, 354-A, 506, 509 IPC and under Section 67-A of the Information Technology Act, 2000 and thereafter, on 6.10.2020, vide letter No.3530 dated 6.10.2020, the report was submitted to the SSP, Ferozepur, by stating that opinion of legal panel has been obtained on 2.10.2020 and the aforesaid panel opined that case be registered against the petitioner under Sections 342, 376/511, 354, 354-A, 506, 509 IPC and under Section 67-A of the Information

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Technology Act, 2000 and that the SHO, Police Station, Kulgari, Ferozepur, be directed accordingly.

Thereafter, on 10.10.2020, FIR was registered against the petitioner under Sections 354, 354-A, 506, 509 IPC and under Section 67-A of the Information Technology Act, 2000. However, Sections 342 and 376/511 IPC, were not mentioned in the FIR.

Thereafter, on 13.10.2020, complainant got recorded her supplementary statement in which she reiterated her allegations against the petitioner and also stated that on 1.9.2020, she received threat call during late night at about 1:09 A.M. and that regarding which she has already sent an E-mail to the DIG, Ferozepur and DGP, Punjab and also one Scorpio bearing Registration No.PB-04AA-0099, started following her often and also attempted to kill her and that her life and property be protected. Furthermore, the date of incident was also described as 28.6.2020. On the same day i.e. on 13.10.2020, another G.D. No.032 was recorded on the statement of the complainant wherein it was stated that Section 376/511 and 342 IPC be added in the present FIR. Thereafter, the complainant again got recorded her statement under Section 164 Cr.P.C. on 20.10.2020 before the

Judicial Magistrate First Class/Duty Magistrate, Ferozepur by reiterating the allegations.

Mr.R.S.Cheema, learned Senior counsel assisted by Mr.K.S.Nalwa, Advocate, appearing on behalf of the petitioner has submitted that the petitioner has been falsely implicated in the present case and there has been abuse of process of law by lodging the present FIR against the petitioner.

The first argument raised by the learned senior counsel is that a perusal of the conclusion report of the SIT would suggest that it consists of two parts i.e. firstly the incidence starting from February 2020 and thereafter, wherein allegedly the whatsapp messages and screen shots etc. were got verified from the Cyber Crime Cell and the second incident which the complainant alleged about the last week of June 2020 wherein she made allegations with regard to the physical advances as well as threatening her with revolver etc. The learned senior counsel has submitted that the conclusion report of the SIT with regard to initial allegations even if for the sake of arguments are taken to be true, the same may constitute an offence under Section 354-A IPC and therefore, would be a bailable offence and so far as second part of the conclusion report with regard to the allegations of physical

advances is concerned, the SIT had concluded that it was not possible to make any specific comments on the same. Therefore, according to the learned senior counsel, the allegations are not proved before the SIT.

Learned senior counsel has further submitted that there was a delay of about a month in lodging the FIR by the complainant and the said delay has not been explained. According to him, as per the FIR, the alleged incident took place in the last week of June 2020 and the first complaint which the complainant made to the DGP, was on 27.7.2020 and therefore, said delay being unexplained would become a ground for consideration for the grant of anticipatory bail to the petitioner. He has also submitted that it is not a case where the complainant is not aware about her legal remedy because she has also filed a complaint against one Mandeep Singh alleging commission of indecent acts and trying to outrage her modesty on 1.7.2020 whereas the alleged occurrence in the present case was in the last week of June, 2020 and therefore, it cannot be said that the petitioner was not conscious of her legal remedy.

Learned senior counsel has further argued that it is a case where the petitioner has been falsely implicated on the basis

of mala fide on the part of certain influential persons. He submitted that it is a case of political vendetta and the sole object of lodging of the FIR is to malign the petitioner in the eyes of local public of District Ferozepur. He further submitted that there was a conspiracy hatched between the local MLA Parminder Singh Pinki in collusion with his brother-in-law Harjinder Singh @ Bittu Sangha along with DIG, Ferozepur range Sh.H.S.Mann and to substantiate his case, learned senior counsel submitted in the following manner:-

(i) There were initially differences and dispute between the petitioner and DIG, Ferozepur range in the year 2000 in which the petitioner had filed a complaint before Punjab State Human Rights Commission against the said officer when he was posted as SP (Vigilance) and the said Commission in the year 2001 had observed that said officer had misused his authority and harassed the ordinary citizens and that the attitude is most unbecoming of an officer. Thereafter, in some other inquiry observations were made against the said DIG in the year 2003

when he was SSP.

Learned senior counsel further submitted that in the present case, a SIT was formed by the aforesaid DIG who is posted as DIG Ferozepur range and it was due to this reason that the present FIR has been lodged against the petitioner.

(ii) Learned senior counsel has further described about the previous complaints made by the complainant and by giving brief facts, he submitted that the complainant was married with one Harjinder Singh and matrimonial dispute proceedings started between them. Earlier, the mother of the petitioner had filed a complaint against one Mandeep Singh and other unknown persons alleging beatings and pushing her daughter under the influence of alcohol and the complainant had also filed a complaint against Mandeep Singh alleging commission of indecent acts and outraging modesty on 28.1.2019. An inquiry was conducted wherein on 20.2.2019, it

was found that the complaint was false. Thereafter, second complaint was filed by her against Mandeep Singh for the aforesaid alleged occurrence on 28.1.2020 which ultimately led into filing of FIR No.0118 under Sections 354 and 506 IPC, against Mandeep Singh. On 1.5.2019, the complainant also got registered FIR No.006 under Sections 498-A and 120-B IPC, at Police Station, Nai District Ferozepur alleging molestation and unnatural sex against her husband. The complainant had also filed a complaint regarding molestation against Gurjant Singh who was cousin/GPA of her husband.

(iii) Another ground of mala fide as submitted by the learned senior counsel is that on 2.7.2020, one Daljeet Singh son of Kuljit Singh who is a Congress Worker and P.A. to Parminder Singh Pinki MLA, Ferozepur, submitted an affidavit on 27.7.2020 against aforesaid MLA, his brother-in-law Harjinder Singh @ Bittu Sangha by making serious allegations of a railway

recruitment scam by the local MLA in collusion with his brother-in-law and having collected huge sums of money from the villagers for getting their children employed in the Railway Department. Since the aforesaid MLA was also nursing a grudge against the petitioner for his increased popularity with the General Public of Ferozepur, he further got agitated with the petitioner on the assumption that the petitioner was behind submission of affidavit by his PA against him and in retaliation of the same the local MLA with able support of DIG, Ferozepur range got filed complaint dated 27.7.2020, through the present complainant before the DGP, Punjab and various other allegations have also been made by the petitioner alleging mala fide in this regard.

(iv) Learned senior counsel further submitted that the wrongful action of the police can be substantiated from the fact that initially a draft of FIR No.0147 dated 10.10.2020, was made and thereafter, the present FIR No.0159 of the

same date was registered. He submitted that there is no provision under the law for making draft of the FIR and there is no justification as to why the draft FIR was prepared and he further stated that the present FIR was registered under the supervision of DIG, Ferozepur. He has relied upon judgment of this Court in case **Sarabjit Singh Virk Vs. State of Punjab and others, 2008 (1) RCR (Crl.) 934**, in which has been observed that there is no provision for the draft FIR. Learned senior counsel, therefore, submitted that the same itself would constitute mala fide on the part of police authorities.

Learned senior counsel also relied upon the judgment of Hon'ble the Supreme Court in **Arnesh Kumar Vs. State of Bihar and another, (2014) 8 Supreme Court Cases 273** and submitted that in this case Hon'ble the Supreme Court considered the provisions of Section 41 Cr.P.C. and observed that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to

seven years whether with or without fine cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise; or to a witness so as to dissuade him from disclosing such facts to the court; or the police officer or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured.

Learned senior counsel has further placed reliance upon judgment in case **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) Supreme Court Cases 694,** wherein Hon'ble the Supreme Court laid down the factors and parameters which can be taken into consideration while dealing with the anticipatory bail. The relevant portion of the aforesaid judgment is reproduced as under:-

“112. *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.

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the

judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

Irrational and Indiscriminate arrest are gross violation of human rights.

115. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

Per contra, Ms.Monika Jalota, learned Deputy

Advocate General, Punjab, has opposed the grant of pre-arrest/anticipatory bail to the petitioner. She has submitted that so far as the delay part is concerned, the said delay cannot be fatal to the prosecution. She has submitted that in such kind of cases in view of honour and dignity of the complainant and her family members being involved, such delay is normally caused. Apart from this, the complainant herself has stated in the FIR that when the occurrence took place and she objected to the same and raised noise, then the petitioner detained her in his house and threatened to kill her and that the petitioner had also threatened that in case she discloses the same to anyone then he would get her killed from gangsters or get her or her family members implicated in false cases and therefore, the delay caused in such kind of cases cannot be a ground for the grant of pre-arrest/anticipatory bail to the petitioner.

Learned State counsel has further submitted that so far as the arguments raised by the learned senior counsel for the petitioner with regard to conclusion report by the SIT is concerned, it would not be correct to divide the said conclusion report into two parts. She submitted that it was a sequence of events which led to the occurrence on 28th June, 2020. She has submitted that the fact

that the Director Di-Tack State Cyber Crime Cell, Punjab, had verified the screen shot of messages and whatsapp calls between the petitioner and the complainant wherein obscene and vulgar language was used itself, would suggest that the same culminated into the episode which occurred on 28th June, 2020. Furthermore, the finding by the SIT that no specific comment can be made on the incident of last week of June, 2020, would mean that the allegations have not been disproved and therefore, it would rather necessitate the custodial interrogation of the petitioner.

Learned State counsel has further submitted that so far as the fact that the complainant had filed complaint against Mandeep Singh and Gurjant Singh pertaining to the allegations of outraging the modesty and molestation are concerned, the same cannot become a ground for the grant of anticipatory bail to the petitioner. Both Mandeep Singh and Gurjant Singh are the general power of attorney holders of her husband namely Harjinder Singh and the matrimonial cases were being defended through them and that the complainant had also filed a complaint against her husband Harjinder Singh alleging dowry demand as well as sexual assault. Another complaint was also filed against Sukhdev Singh who is the son of aforesaid Gurjant Singh and therefore, all these

complaints which were part of one dispute between the petitioner and her husband also cannot become a ground for the grant of anticipatory bail to the petitioner.

Learned State counsel has further submitted that the petitioner has been constantly threatening the complainant. She submitted that as per the statement of the complainant a white Scorpio Car bearing registration No.PB-04AA/0099, had been following the complainant often and also attempted to kill her and further the complainant received a threat call on 1.9.2020. She further submitted that one Surinder Bhullar has also stated that he had filed a wrong complaint against the complainant on the asking of the petitioner.

Learned State counsel relying upon the judgment in case **Siddharam Satlingappa Mhetre (supra)** aforesaid, cited by the learned senior counsel for the petitioner by referring to sub paras (viii) and (ix) of para No.112, has prayed for dismissal of the present petition.

Learned State counsel further while referring to the arguments advanced by the learned senior counsel appearing on behalf of the petitioner has submitted that making a draft FIR itself would show the mala fide on the part of the petitioner in

connivance with some police official. She submitted that in fact it was the petitioner who was instrumental in making such a draft FIR and the said FIR No.147 is itself registered under the NDPS Act. She submitted that initially the present FIR was registered excluding the Sections 376/511 and 342 IPC, which shows the connivance of the petitioner with some police officials and therefore, such kind of draft FIR may be the result of the same. She has further submitted that CCTV camera along with footage of the office of the petitioner and the revolver belonging to the petitioner is yet to be recovered and therefore, custodial interrogation of the petitioner would be required and as such, the present petition be dismissed.

Ms.Reeta Kohli, learned senior counsel assisted by Mr.Ivan Singh Khosa, Advocate, who has caused appearance on behalf of the complainant has submitted that the complainant has been receiving threat calls from the petitioner for the withdrawal of the present case and that on 1.9.2020, she had received a threat call during late night at about 1:09 AM and regarding the same the complainant had sent an E-mail to the DIG Ferozepur range and also to the DGP, Punjab. She also submitted, on instructions from the complainant, that a white Scorpio bearing registration No.PB-

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04AA/0099 had been following her often and had attempted to hit her and that she has also sent a complaint regarding this to the DGP, Punjab on 11.11.2020 by giving the vehicle number. She further submitted that in fact the in laws of the complainant had filed 11 complaints against the complainant and the complainant has been exonerated in all of them. She further submitted that in view of the above, the complainant is under constant active threat from the petitioner and as such, the present petition be dismissed.

I have heard the learned senior counsel appearing on behalf of the petitioner and learned State counsel as well as learned senior counsel appearing on behalf of the complainant.

So far as the first argument advanced by the learned senior counsel for the petitioner with regard to the findings/conclusion report of the SIT that only the first part was proved and not the second part is concerned, it can be seen that the conclusion report is a comprehensive report giving the sequence of events starting from February 2020 which led into exchange of whatsapp messages and calls etc. and the same have now been authenticated through the report of Director Di-Tack State Cyber Crime Cell, Punjab, as per the SIT report. When the SIT was dealing with the alleged episode of last week of June 2020, there

was no definite conclusion with regard to the same and it was stated in the report that no specific comments can be made in this regard and thereafter, the FIR was registered. The matter being at the investigation stage cannot be deemed to be concluded at the point where the SIT made its observations. Any further aspects are to be seen so as to conduct a fair and impartial investigation and therefore, at this stage, it cannot be said that the petitioner is not guilty of aforesaid allegations only because the SIT was not able to arrive at a definite conclusion with regard to the episode pertaining to the last week of June 2020.

So far as the delay aspect is concerned, the submission made by the learned State counsel that in such like cases where such like allegations are made and where the honour and dignity of a woman and her family members is involved, delay could be normal in our society does carry weight. Furthermore, the learned State counsel has also pointed out from the FIR that the petitioner had threatened her with dire consequences in case she reported the incident to somebody and therefore, the delay itself cannot become a ground for the grant of anticipatory bail to the petitioner.

So far as the mala fide alleged by the learned

senior counsel for the petitioner is concerned, primarily the same has been made against the DIG of Ferozepur range and the local politicians. All such allegations have been refuted by the learned State counsel as well as the learned senior counsel for the complainant during the course of submissions. The question that would arise for consideration before this Court would be as to whether on the basis of such allegations of mala fide, the petitioner can be granted anticipatory bail in the light of other factors and grounds which have been raised by the learned State counsel as well as by the learned senior counsel for the complainant.

The law with regard to the grant of anticipatory bail in case *Siddharam Satlingappa Mhetre (supra)* which has been referred to by counsel for both the parties is concerned, the same is clear from the perusal of para 112 of the aforesaid judgment reproduced above. The parameters as enunciated by Hon'ble the Supreme Court including the gravity of the accusations and exact role of the accused etc. are concerned, it has been observed that while considering the prayer for the 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 and the Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and that the arrest should be last option and should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

In the present case, the respondent-State as well as the learned senior counsel for the complainant have categorically stated and also referred to the statements made to the police as well as to the learned Judicial Magistrate First Class, under Section 164 Cr.P.C. and to the contents of the FIR itself that the complainant is being threatened by the petitioner by various means. Therefore, while considering the plea for the grant of anticipatory bail, the aforesaid factors would be paramount in deciding the same. Therefore, while considering the grant of anticipatory bail to the petitioner, the allegations of mala fide levelled by the petitioner in lodging of the FIR would become subservient to the aforesaid factors as submitted by the respondent-State as well as by the learned counsel for the complainant with regard to threat to the complainant by different means. Furthermore, as per State counsel, the CCTV camera and the equipments containing footage of the

same as well as revolver is yet to be recovered from the petitioner and therefore, custodial interrogation would be necessary in the facts and circumstances of the case.

So far as the plea raised by the learned counsel for the petitioner that before lodging of present FIR, another draft FIR was prepared is concerned, the explanation given by the learned State counsel that the said draft FIR seems to be an outcome of the connivance of petitioner with some officials of the police seems to be plausible. The lodging of FIR by excluding Sections 342 and 376/511 IPC, initially despite opinion of legal panel and letter dated 6.10.2020, to the SSP, Ferozepur, by the SP (Headquarter) and DSP (Investigation), to register FIR under Sections 342, 376/511, 354, 354-A, 506 and 509 IPC read with Section 67-A of the I.T. Act, would certainly substantiate the argument raised by the learned State counsel in this regard.

Therefore, considering the totality of the circumstances of the present case and considering the submissions made by the learned counsel for the parties, I am of the considered view that it is not a fit case for interference and therefore, the present petition for the grant of pre-arrest/anticipatory bail to the petitioner is hereby dismissed.

However, it is made clear that aforesaid observations of this Court are only for the purpose of deciding the present petition and will not in any manner whatsoever reflect on the merits of the case.

November 12, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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