

CRM-M-18942-2021

THROUGH VIDEO CONFERENCE

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

**CRM-M-18942-2021.
Decided on: May 28, 2021.**

Varun Singh

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Sanjiv Kumar Yadav, Advocate,
for the petitioner.**

Mr.Deepak Manchanda, Addl. A.G. Haryana

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 anticipatory bail to the petitioner in case FIR No.36 dated 12.4.2021, under Section 406 IPC as well as under Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, registered at Women Police Station, District Ambala.

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As per the FIR, which has been attached as Annexure P-1 along with the present petition, the same was lodged on the basis of the statement made by the complainant who is stated to be 16 years of age and is studying in 12th Class. As per the FIR, in August 2019 the complainant who is a minor girl of 16 years received a request from Notty Varun (petitioner) on Snapchat which was accepted by her and thereafter, they started talking with each other on mobile phone and developed friendship and started meeting with each other. As per the allegations, thereafter the petitioner started pressurising the complainant to send her photo to him and under pressure, she sent her normal photo and thereafter, the petitioner started pressurising her for her nude and semi-nude photos. On the asking of the petitioner, she had sent her nude and semi-nude photos through Snapchat on the phone of the petitioner. Thereafter, the petitioner started making excuses by saying that he is in need of some money. He took away her gold chain in which pendant of God Shiva was annexed. This all happened in February 2021 and thereafter, the petitioner had also taken away her mobile phone, Guitar and Head Phone on the pretext that he will return it soon but the same was not returned till date and the petitioner used to propose her for marriage. In December 2020, the petitioner took away her on an excuse that he will let her meet his grand-mother and then they went to Sector 10, where one old lady was sitting and there the petitioner left the complainant to meet her and then they returned back. In August 2020, the petitioner took the complainant in a white car at about 7:00 P.M. and kept her in a hotel and molested her (wrongly translated by petitioner the

expression 'ched chhar' as eve-teased) and on the next day, the petitioner left her at her house and kept talking to her on phone.

The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and no offence was made out against him either under the POCSO Act or under Section 406 IPC. He has submitted that there was a consensual relationship between the petitioner and the complainant girl and the learned counsel for the petitioner has even referred to the transcript of the recorded conversation vide Annexure P-4 to show that there was a consent between the petitioner and the girl and therefore, no offence is made out against the petitioner. He has submitted that the FIR has been lodged under pressure from the parents of the girl and therefore, he has prayed for the grant of anticipatory bail to the petitioner.

Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in *Arnesh Kumar Vs. State of Bihar 2014 (8) SCC 273*, to contend that where the offence is punishable with imprisonment for a term which is less than 7 years then normally the police shall restrain itself from arresting the accused.

Notice of motion in this case was issued on 13.5.2021 and the learned State counsel had sought time to seek instructions and to file affidavit. Thereafter, a reply by way of affidavit of Mr.Madan Lal, HPS, Deputy Superintendent of Police, Ambala, District Ambala, was filed on behalf of State of Haryana on 19.5.2021.

Learned State counsel while opposing the grant of

anticipatory bail to the petitioner has referred to the contents of the affidavit which has been filed by the Deputy Superintendent of Police, Ambala, District Ambala. He has submitted that, as a matter of fact, the petitioner who is a major person had allured minor girl (complainant) who was of the age of 14 years at that time on the pretext of marriage and thereafter, the petitioner developed friendly relations with her and emotionally allured her to pay money and also succeeded to take a gold chain, a mobile phone, guitar and head phone and also pressurised her for sending her nude and semi-nude photos on his mobile and thereafter, committed a grave offence with the minor victim which affects the society at large. Learned State counsel has further submitted that after registration of the present case, birth certificate of the minor victim was collected as per which her date of birth is 12.2.2005 and the same was taken into police possession by preparing a recovery memo. On the same day, the minor victim led the police party to a hotel Mohan Vilas, Ambala City and demarcated room No.105 where the accused-petitioner committed eve-teasing with the victim and the investigating officer prepared memo of place of occurrence attested by the witnesses and also recorded the supplementary statement of the minor victim.

Learned State counsel while referring to the affidavit filed by the Deputy Superintendent of Police, Ambala, District Ambala, has submitted that on 15.4.2021, the minor victim was taken to the Court of learned Judicial Magistrate First Class, Ambala for recording her statement under Section 164 Cr.P.C. and thereafter, her statement was recorded by the

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learned Judicial Magistrate First Class, Ambala. He has submitted that as per the affidavit, on 22.4.2021, the certified copy of the statement of the minor victim was received by the investigating officer in which the minor victim reiterated that the accused-petitioner had physically assaulted her and he had also allured her to send nude and semi-nude pictures on the pretext of marriage and the minor victim also stated that the accused-petitioner had taken her gold chain and threatened the minor victim to upload her nude pictures on the social media. The investigating officer tried to apprehend the accused-petitioner but he could not be apprehended and he is absconding. He has submitted that as per the affidavit, thereafter, on 7.5.2021, the minor victim along with her cousin brother Mohit Sharma came to the police station and the minor victim stated that in the month of August and November 2020, the petitioner had taken her to Sangam Resort and demarcated Room No.207 and disclosed that in the month of August 2020, the accused-petitioner took her in this room and outraged her modesty. Thereafter, again on 9.5.2021, the investigating officer reached at Sangam Resort and verified from the Resort record about the booking of room and as per record vide serial No.76 dated 26.8.2020, the accused-petitioner had booked room No.207 through online by producing his Aadhar Card as well Aadhar Card of minor victim and as per the Resort record, the accused-petitioner along with minor victim reached the said Resort on 26.8.2020 at 2:29 PM and remained in the company of minor victim in roomNo.207 upto 7:00 P.M. The investigating officer also verified from the Resort record about the booking of room on 18.11.2020 and as per record vide serial

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No.393 dated 18.11.2020, the accused-petitioner had booked room No.212 by producing his Aadhar Card and that of the minor victim and as per the Resort record, the accused-petitioner along with minor victim reached the said Resort at 4:10 P.M. and remained in the company of minor victim in room No.212 upto 4:37 P.M.

Learned State counsel has further submitted that on the basis of the investigation conducted by the police, the matter is not only serious in nature but also affect the society at large. The petitioner who is a major person had allured the minor victim who was of the age of about 14 years in the year 2019 on the pretext of marriage and pressurised her to send him her nude and semi-nude photos on his mobile phone which is a grave offence. While referring to para 13 of the affidavit, the learned State counsel has further submitted that custodial investigation of the petitioner is also required in this case for the purpose of recovery of gold chain, Guitar, Mobile Phone of the victim as well as mobile phone of accused-petitioner having nude and semi-nude photos of minor victim along with chat. He has submitted that there is every possibility that the petitioner may misuse the nude and semi-nude photos of the minor victim and therefore, the learned State counsel has prayed for dismissal of the present petition for anticipatory bail.

I have heard the learned counsel for the parties.

As per the FIR as well as the investigation conducted by the police a very grave and serious role has been attributed to the petitioner. As per the allegations, the complainant victim was of the age of 14 years in

the year 2019 when the petitioner had allured her on the pretext of marriage and thereafter, when the girl was of the age of 16 years, the present FIR came to be lodged. The argument raised by the learned counsel for the petitioner that the relationship was the result of consent between the petitioner and the minor girl would not carry any weight in view of the fact that consent of a minor is immaterial and insignificant. Another argument raised by the learned counsel for the petitioner that the FIR came to be lodged on the basis of pressure by the parents of the girl also does not inspire confidence at this stage in view of the fact that the statement of the minor girl victim was recorded under Section 164 Cr.P.C. before the Judicial Magistrate First Class, Ambala, wherein as per the prosecution, she reiterated the allegations levelled in the FIR. Learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in **Arnesh Kumar (supra)** to contend that there should not be automatic arrest where the punishment prescribed is less than 7 years. The Hon'ble Supreme Court in the aforesaid judgment had issued various directions and all the State Governments were directed to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down flowing from Section 41 Cr.P.C. Police officers were also directed to furnish the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The directions were not only limited to Section 498-A IPC but were also made applicable to cases where the offence is punishable with

imprisonment for a term which may be less than seven years or which may extend to seven years. Therefore, the argument raised by the learned counsel for the petitioner that the police should not make arrest when the maximum punishment provided is less than seven years, is fallacious. As per the judgment of the Hon'ble Supreme Court, it is the satisfaction about the necessity of arrest which is important and which has to be complied with. Furthermore, in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) Supreme Court Cases 694*, Hon'ble the Supreme Court laid down the factors and parameters which can be taken into consideration while dealing with the anticipatory bail. The first parameter laid down was that the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made. Various other parameters were laid down which could be considered for deciding the petitions for the grant of anticipatory bail and it was held that Courts must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and whether these allegations are corroborated by other material and circumstances on record.

In the present case, a detailed affidavit has been filed by the Deputy Superintendent of Police, Ambala, in which it has been stated that it is not only once but for number of times the petitioner had allegedly taken the minor girl to different Resorts and the police has also checked up the records of the same. The nature and gravity of the accusations is of such a magnitude that the petitioner cannot be granted the concession of anticipatory bail. The apprehension of the police that the petitioner may

mis-utilize the nude and semi-nude photos is well founded. Recovery of mobile phone of petitioner is definitely important for investigation. Therefore, considering the totality of the circumstances of the present case, I do not deem it fit and proper to interfere in the present case and consequently, the present petition for the grant of 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.

May 28, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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