

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21590-2021

Date of decision: 29.06.2021

Ankur

.....Petitioner

V/s.

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Momi, Advocate, for
Mr. Sandeep Sharma, Advocate, for the petitioner.

Mr. Deepak Sabharwal, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J.

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in case bearing FIR No.0203 dated 09.05.2021, under Sections 120-B/342/354/365/376-D/506 of Indian Penal Code, 1860, registered at Police Station City Bahadurgarh, District Jhajjar.

As per the allegations contained in the aforesaid FIR a complaint was made by one Utpal Basu stated to be a trade union activist and member of Association for Protection of Democratic Rights (APDR) and resident of Hoogli, West Bengal by stating that he had a daughter aged 25 years who was an artist and an ornament designer. She was also a supporter of the farmers' movement. On 1st April, a delegation of six

persons including Anil Malik, Anuj Singh Chanaut, Ankur Sangwan (petitioner), Kovita Arya, Jagdish Brar and Yogita Suhag reached Bengal as a part of the campaign by Samyukt Kisan Morcha. The daughter of the complainant met them on 4th April at Hoogli and while conducting public meeting the daughter of the complainant got involved with the group and wanted to join them. She contacted Yogita who directed her to contact Anil Malik as he was the co-ordinator of the Association. She had earlier been involved with popular protests and movements and expressed her desire to travel with the group to Delhi. Although the complainant was initially reluctant but finally he agreed to let her go to Delhi and in April she left from Howrah station for Delhi along with five other persons namely, Anil Malik, Anup Singh Chanaut, Ankur Sangwan (petitioner), Jagdish Brar and Kovita Arya. Since Anil was the senior most member, the complainant requested him to look after Moumita like his sister. In the train at night when everyone had slept, Anil came to his daughter's berth and forced himself on her and held her hands and kissed her forcefully. The complainant's daughter told him to go away and asked him not to repeat that behaviour. On 12th April the group reached Delhi where they were taken to Tikri Border site where farmers were staying in tents and since she did not know anyone else and was yet to understand things at the new place, she stayed at the tent of Kisan Social Army along with Anil Malik, Anup Singh Chanaut and Ankur Sangwan (Petitioner). She narrated the train incident to the complainant on phone for the first time on 14th April and was feeling very hesitant while speaking and she said that Anil and Anup are not decent

people and they were blackmailing her and the complainant told her to speak to some women over there and also to inform the local committee and seek their help immediately. And when complainant got in touch with her over the phone and she told her that she was under pressure and finally on 16th April she told that she had confided in Yogita and Jagdish, and that Yogita had also made a video of her statement on the same day in the presence of Jagdish. The same is also stored in the phone of his daughter. On 16th and 17th April, she also told the complainant over phone that she had passed blood with urine and complainant asked her to take immediate help from women around her and see a doctor if required. She told the complainant on 16th April that she had moved to another tent with the help of Yogita. On 17th April the complainant spoke to Yogita and requested her to help his daughter. On 18th April she told the complainant that she had met with lawyers and it was decided in the meeting that the incident of sexual harassment will be brought to the notice of the leaders of the Morcha. On the same evening with the help of Yogita she was shifted to tent near pillar No.774 where there were more women. After a few days, she called the complainant to say that she was feeling relaxed because she had her menstrual discharge. The complainant asked her that what was there to be happy about and she said that you men will not understand. Thereafter the complainant started placing the things together and was convinced that something grave had happened with his daughter. On 21st April she developed mild fever followed by vomiting and loose motions and she took some medicines from the medical camp at Tikri but her condition did not

improve much. By 24th April she had cough and breathing difficulty and on 24th April, she got in touch with one Mr. Avik Shah, who lives in Kolkata and is associated with Jai Kisan Andolan, and requested him for medical help who put him in touch with his friend Dr. Amit Vats in Delhi. Mr. Yogendra Yadav one of the leaders on the Samyukt Kisan Morcha also checked her medical condition on phone by speaking to her. On 25th April, Anil and Anup got an idea that daughter of the complainant is in touch with the leaders of the Morcha, so they decided to remove her from Tikri and the complainant got a call from his daughter's number and a person who introduced himself to be member of the local committee spoke with him. They also wanted to send the girl to West Bengal but the complainant refused because she needed medical attention and they made the complainant to speak to with her when she sounded very low and was relentless on the condition that she be accompanied by a woman and that Anil and Anup must be kept away. After a while when the complainant called his daughter, he learnt that she was sent in a car with Anil and Anup and therefore, he got worried and contacted Dr. Amit who informed Mr. Yadav and Anil told Mr. Yadav on phone that they were taking the girl to Bengal on her father's request and they had reached Agra. However, the daughter of the complainant sent her location to Mr. Yadav on Whatsapp which showed that she was somewhere around Hansi in Haryana. Mr. Yadav intervened and asked Anil to drive back to Bahadurgarh and threatened him with police action if they did not do so. This was a clear attempt to abduct the daughter of the complainant by two assaulters. The

daughter of the complainant was brought back to Tikri on the night of 25th and 26th and the local committee took her to PGI, Rohtak where there were no beds and finally she was admitted to Shivam Hospital at Bahadurgarh and was diagnosed with Covid-19 and was treated there. However, her condition remained unstable and the complainant was informed about this by Dr. Amit. Thereafter, the complainant reached Delhi on 29th April and was with his daughter at the hospital where she told him about the incident that had transpired in the train and at the KSA tent and she told him that during her stay at the KSA tent, she was sexually assaulted by Anil Malik and Anup Singh helped him. She was under pressure and constant watch by Anil and Anup at the tent. She also told that something wrong has happened to her and, therefore, the complainant could now place why she happily said her menstrual discharge had happened and what was the reason for passing of blood with urine. She also asked the complainant to ensure that Anil and Anup were punished. She also asked the complainant to ensure that the farmers movement should not be harmed. However, she died in the morning of 30th April.

The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case in view of the fact that going by the allegations contained in the FIR, the allegations pertain to two persons namely, Anil Malik and Anup Singh but there are no direct allegations against the petitioner in the FIR which has been lodged by the complainant who is father of the deceased girl. He submitted that in the absence of any direct allegation against the petitioner, the petitioner may be

considered for grant of anticipatory bail. Learned counsel further submitted that although as per the allegation, the petitioner was staying in the tent along with other co-accused and the deceased but no presumption can arise that the petitioner was also involved in the alleged incident.

The learned counsel further relied upon the judgment of the 'Supreme Court in '*Siddharam Satlingappa Mhetre versus State of Maharashtra and others*' [2011 (1) R.C.R (Criminal) 126] and '*Sushila Aggarwal and others versus State (NCT of Delhi) and another*' [2020 (1) R.C.R (Criminal) 833]

Notice in this petition was issued on 03.06.2021 and the learned State counsel had sought time for submitting the status report. Thereafter, status report by way of an affidavit was filed by Pawan Kumar, HPS, Deputy Superintendent of Police, Bahadurgarh, District Jhajjar on behalf of the State. Thereafter, on 16.06.2021 the learned State counsel requested for an adjournment to place on record the audio clipping of the victim. Thereafter, another affidavit was filed by the Deputy Superintendent of Police, Bahadurgarh, District Jhajjar dated 18.06.2021 wherein a pen drive of the audio clipping was placed on record and the transcript of the same was also attached as Annexure R-1 with the affidavit.

Mr. Deepak Sabharwal, learned Additional Advocate General, Haryana while vehemently opposing the grant of anticipatory bail to the petitioner has submitted that it is a case where although no medical examination could be conducted because the girl had died due to Covid-19 disease and even her statement under Section 164 Cr.P.C could not be recorded before her death but the facts and circumstances of the case would

show the involvement of the petitioner in the present case along with the other co-accused. Learned Additional Advocate General while referring to the affidavit filed by the State dated 11.06.2021 submitted that on 09.06.2021 the co-accused Anil Malik was arrested and was interrogated. During interrogation accused Anil Malik suffered his disclosure statement and admitted that he and co-accused had committed sexual assault and rape upon the complainant's daughter and he made video of rape for the purpose of blackmailing her. He further admitted that the co-accused Anup Singh Chanaut also committed sexual assault and rape upon the deceased girl after threatening her. He further mentioned that the present petitioner namely Ankur by using criminal force outraged her modesty. He had further disclosed that the accused Anil Malik and Anup Singh Chanaut forcibly took the girl in their car to Hansi. Accused Anup Singh Brar and Ankur Sangwan (petitioner) forcibly kept the girl in the tent and the accused persons also snatched the money from her. They further threatened to kill the girl in case she disclosed anything to any person. The aforesaid accused Anil Malik is on police remand. It is further stated in the affidavit that petitioner Ankur is hand in glove with the main accused namely Anil Malik and he outraged the modesty of the girl by using criminal force and kept her in tent forcibly. The petitioner also helped other accused in sexually assaulting and raping the deceased girl. It is further stated in the affidavit that the deceased girl could not be medically examined as she was suffering from Covid-19 and Post-Mortem also could not be conducted on her body. It is further stated in the affidavit that the allegations leveled by the complainant against the petitioner/accused are serious in nature and

custodial interrogation is required to extract the real facts of the case. He further submitted that although in the recording in Pen drive, name of none of the accused is mentioned, the case is based on circumstantial evidence as well and for that purpose, custodial interrogation was required.

The learned Additional Advocate General, Haryana further submitted that although on the basis of the facts contained in the FIR there may not be a direct allegation against the petitioner but the FIR cannot be considered to be an encyclopedia and it was lodged on the basis of the complaint made by the father of the deceased girl and it was thereafter during interrogation of the co-accused that various other facts came to light. He submitted that as per the FIR the petitioner was also staying in the tent where the deceased girl and other accused were staying initially. Another serious allegation against the co-accused was that he was also trying to blackmail the deceased girl on the basis of video of the rape. Since the petitioner was also staying in the same tent and further interrogation is required to be made especially with regard to the said video on the basis of which the other co-accused was blackmailing the deceased girl and, therefore, custodial interrogation of the petitioner is extremely essential. He further submitted that it is not a case of the petitioner that the petitioner had parted ways from the other co-accused after the alleged incident which took place in the train which came to his knowledge later on but he continued to stay in the tent and the place of rape and other evidences connected with the same are to be investigated in thorough manner. He has further submitted that although so far as the allegations pertaining to abduction of the deceased girl by taking her to Hansi are concerned it pertains to the other

co-accused but during interrogation of the co-accused it was found that the petitioner had also outraged the modesty of the girl by using criminal force and had kept the girl in the tent forcibly. He further submitted that there is every likelihood that the petitioner may tamper with the evidence or may misuse the same or may flee from the justice. He further submitted that in view of the peculiar facts and circumstances of this case the custodial interrogation of the petitioner is essential for the discovery of truth. He has therefore prayed for dismissal of the anticipatory bail application filed by the petitioner.

I have heard the learned counsel for the parties.

A perusal of the FIR in the present case would show that the complainant who is father of the deceased girl had given a description as to how his daughter who was an artist and an ornament designer and was supporting the farmers movements had gone to Delhi in the company of the accused persons. As per the FIR the delegation which had come to West Bengal where the complainant and his daughter were residing consisted of six persons including the petitioner. Thereafter, when they were going to Delhi in train, allegations were leveled on the other co-accused namely Anil during the train journey. Thereafter, the girl stayed in a tent along with three persons namely, Anil Malik, Anuj Singh Chanaut and the present petitioner namely Ankur Sangwan. Thereafter various incidents had taken place which she had narrated to her father on telephone and thereafter, she contacted Covid-19 disease and ultimately died. Neither any medical could be conducted nor her statement under section 164 Cr.P.C could be recorded. However during interrogation of other accused namely Anil Malik

disclosure statement was made by him with regard to the involvement of the petitioner as well. Although disclosure statement itself is a weak piece of evidence but at the same time when there are other factors involved then a relief cannot be granted merely on the ground that the name of the accused has come up on the basis of a disclosure statement of the co-accused. Every case has its own facts and circumstances and are required to be seen in their entirety in a comprehensive manner.

In the present case one of the allegations against the co-accused namely Anil Malik was that he had made a video of rape for blackmailing the deceased girl and another fact has come to light that the petitioner along with other two co-accused namely, Anil Malik and Anup Singh Chanaut had stayed jointly together in a tent along with deceased girl. The co-accused has also stated during the disclosure statement that the petitioner had also outraged the modesty of the deceased girl and also helped the other accused in sexually assaulting and raping the deceased girl. At the time of consideration of prayer for anticipatory bail a balance has to be struck between the freedom of an individual and various other factors including the gravity of the offence, effect on public at large and the peculiar facts and circumstances of each and every case have to be considered.

The Supreme Court in the case of ***Siddharam Satlingappa Mhetre versus State of Maharashtra and others (supra)*** formulated various factors and parameters which can be taken into consideration while dealing with the anticipatory bail. The first factor which has been enumerated is the nature and gravity of the accusation and the exact role of the accused. Apart from

this the impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people is also to be considered. Furthermore, the Court is required to consider reasonable apprehension of tampering of a witness or apprehension of threat to complainant. The Supreme Court further observed that these are some of the factors which should be taken into consideration while deciding the anticipatory bail applications but these facts are by no means exhaustive but only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail.

The Supreme Court in *Sushila Aggarwal and others versus State (NCT of Delhi) and another (supra)* observed that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of him influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice etc. The Courts ought to be generally guided by consideration such as the nature and gravity of the offence, the role attributed and the facts of the case.

The Supreme Court in the case of '*State versus Anil Sharma*' [1997(7) *Supreme Court Cases* 187] observed that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code.

The facts and circumstances of the present case would show that the statement of the deceased girl under Section 164 Cr.P.C could not be recorded and even medical examination regarding the present allegations could not be conducted because she contacted Covid-19 disease. The

learned Additional Advocate General, Haryana has categorically submitted that the petitioner was also staying in the same tent where the offence was alleged to have taken place and he did not part his way from the other co-accused even after the incident that took during the train journey from West Bengal to Delhi. Furthermore, the allegation pertaining to video of the incident of rape on the basis of which the other co-accused namely, Anil had been allegedly blackmailing the deceased girl is also of much importance. The submission made by the learned State counsel that the gravity of the offence was immense and there is a possibility that the petitioner may tamper with the evidence or may misuse the same including the aforesaid video or may even flee from justice thus carry some weight.

Therefore, in the light of peculiar facts and circumstances of the present case, I do not deem it fit to extend the grant of concession of anticipatory bail to the petitioner.

Consequently, the present petition 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.

(JASGURPREET SINGH PURI)
JUDGE

29.06.2021
rakesh

whether speaking	:	Yes/no
whether reportable	:	Yes/no