

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

CRM-M-26706-2021

Date of decision : 04.08.2021

Anoop @ Anuj

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl. AG, Haryana.

Ms. Megha Bahl, Advocate
for the complainant.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed under Section 438 Cr.P.C. praying for issuance of directions to the Investigating Officer/Arresting Officer to release the petitioner on anticipatory bail forthwith in the event of his arrest in case FIR No.203 dated 09.05.2021, under Sections 120-B, 365, 354, 376-D, 342, 506 IPC, registered at Police Station City Bahadurgarh, District Jhajjar.

The FIR in question was registered by the father of the deceased-victim namely, Utpal Basu, who is resident of West Bengal. It has been alleged that his daughter (name withheld) aged about 25 years was an Artist and Ornament Anosnament Designer. She was a supporter

of farmers movement and the delegation of the farmers agitation union reached West Bengal on 1st April, 2021. The victim came in contact with the same as she was the supporter of this agitation. She associated herself with the activities of the delegation in West Bengal and then with the permission of the complainant, left for Delhi from Howrah on 11th April, 2021 along with delegation of Kisan Union Delegation which included the present petitioner Anoop Singh @ Anuj as well as co-accused Anil Malik etc. The complainant alleged that as told by the victim, the co-accused Anil Malik came to the victim and he forcibly kissed her while she was in the train. On 12th April, 2021, the victim along with the delegation reached Delhi and after reaching Delhi, she narrated the incident of the train to her father on phone. She allegedly informed her father that the co-accused Anil Malik and the petitioner Anoop @ Anuj are not the decent people and they were pressurizing and blackmailing her. It is further alleged that on 16th April, the victim told the complainant 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. A copy of the video attached in a pen drive marked as A1 with the FIR. The complainant further alleged that the victim told on 16th and 17th April, she passed blood with urine and on hearing the same, the complainant father asked his victim daughter to take help from some woman. It was further alleged that on 18th April, the victim told the complainant that they had met lawyers called Mr. Chitwan and Mr. Amit Sangwan along with Yogita, Jagdish and one Himmat Singh Brar at Tikri itself and they told her that incident of sexual harassment would be brought to the notice of the leader of SKM. Thereafter, after few days, it is alleged that the victim

called her father that she was feeling relaxed as she had her menstrual discharge and on asking by the complainant, she replied that “you men will not understand”. Unfortunately, she developed mild fever on 21st April and her condition did not improve by 24th April. The complainant requested Dr. Amit Sangwan to arrange medical help for his victim daughter. On 25th April, Anil and Anoop got an idea that the victim was in touch with the leadership of SKM and they decided to remove her from Tikri. When the complainant called up the victim, he learnt that she was with Anil and Anoop and he got worried and talked to Dr. Amit Sangwan, who informed Mr. Yadav. The victim sent her location to Mr. Yadav on whatsapp which showed that she was somewhere in Hansi, Haryana. On this Mr. Yadav intervened and asked Anil to drive back to Bahadurgarh, failing which, he would take police help if they did not come back and thus, there was a clear attempt to abduct his victim daughter. It was further alleged that in the night of 25th and 26th April, the local committee took her to PGI, Rohtak and as there was no bed, finally she was admitted to Shivam Hospital, Bahadurgarh. She was diagnosed for COVID-19 and she was treated there but her condition remained unstable. Knowing all these, the complainant father reached Delhi on 29th April and immediately reached to meet his ailing daughter. During this meeting, the victim told her father the incidents which happened in the train and at the KSA tent during her stay. She emphatically narrated that how she was sexually assaulted by Anil Malik and Anoop Singh. She was under pressure and constant watch of Anil and Anoop at the tent. She told her father “hamara saath kharaab kaam hua hai”. The victim as alleged by the complainant asked the father that Anil and Anoop should be punished.

Unfortunately, the victim died on 30th April, 2021. As the complainant was totally shattered, hence he could not take the legal action immediately after the death of his daughter and thus, lodged the FIR, subsequently.

After registration of the FIR, the police swung into action and commenced investigation. The co-accused namely, Ankur approached this Court by way of filing the CRM-M No.21590 of 2021 for the similar relief under Section 438 Cr.P.C. The same was declined by the Coordinate Bench vide its order dated 29th June, 2021. The present petitioner being specifically named in the FIR also approached the learned Additional Sessions Judge, Jhajjar for the grant of anticipatory bail, however, the same was declined vide order dated 2nd July, 2021 . Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

Mr. KDS Hooda, counsel for the petitioner has vehemently contended that the case of the prosecution is nothing but a cock and bull story. He has argued that the present FIR is nothing but a brutal attempt to malign the ongoing farmers agitation. The counsel narrated the facts as alleged in the FIR from 1st April, 2021 and how the victim came in contact with the delegation and reached Delhi and thereafter, unfortunately she died of COVID-19 on 30th April, 2021. He has vehemently contended that the death in question had taken place on 30th April, 2021 whereas, the present FIR had been registered on 9th May, 2021 i.e. after the delay of 9 days which is totally unexplained and an afterthought false version. Mr. Hooda has contended that as per the allegations in the FIR, deceased felt mild fever on 21st April, 2021 and

subsequently, she had to be admitted in PGI, Rohtak on 26th April, 2021, where finally she succumbed to COVID-19 on 30th April, 2021. Despite the availability of an ample time, there was no statement recorded by the police or by the Judicial Magistrate which cast a serious doubt on the intention of the prosecution. He has drawn the attention of this Court to the transcript of the video made by the deceased by her friends annexed as Annexure P-2. His emphasis is on the fact that there is no allegation of rape in this transcript. Besides this, he has argued that the investigating agency has never got conducted any postmortem of the deceased simply on the excuse of the deceased being COVID-19 positive. Thus, the case put up against the petitioner is totally without any evidence. He submits that taking into consideration the overall case of the prosecution, the petitioner deserves to be enlarged on anticipatory bail as there is no case made out for the custodial interrogation of the petitioner. He contended that the victim was on the ventilator and therefore, she could have never told anything to her father as asserted in the FIR. Finally, he submitted that in the facts and circumstances of the case, his custodial interrogation as apprehended is totally in violation of his rights as to life and liberty as enshrined in Article 21 of the Constitution.

The State was directed to file status report, which has been placed on record as Annexure R-1.

Mr. Deepak Sabharwal, Addl. AG, Haryana appeared on behalf of the respondent-State and has opposed the contentions raised by counsel for the petitioner. He has contended that there are in all six accused in the present case who were involved in the heinous offences committed upon the victim. He submitted that the co-accused Ankur had

already approached this Court whose anticipatory bail already stands declined by this Court. He vehemently contends that from the bare reading of the FIR, the offence of rape are made out against only two of the accused out of six and the petitioner is one of these two. He submits that co-accused Anil Malik has already been arrested and his disclosure has been annexed with the status report filed as Annexure R-1. He invited the attention of this Court to the disclosure statement of accused Anil. A clear picture has been given by this co-accused regarding the complicity of the present petitioner in ravishing the honour of victim. As per the disclosure, the co-accused Anil Malik and the present petitioner sexually assaulted the victim. Learned State counsel has submitted the details of the investigation carried so far and the recoveries made in pursuance to the disclosure made by co-accused Anil Malik. He emphasizes on the CDMR (Call Details Manual Record). As per the investigation of the call details by the Investigating Agency, the petitioner was definitely in touch with the co-accused Anil Malik which is duly established by the call details of both the mobile numbers. He has given the mobile number of the accused. He has submitted that during investigation, it has been established that the mobile number of Anil Malik is 8800718700 and that of the present petitioner Anoop@Anuj mobile number is 7419020008. Besides this, the mobile number of the victim as investigated by the Investigating Officer is 6291733269. He has submitted that the investigating agency has verified the location of the accused and the victim on the basis of the CDMR and as per the conclusion, the tower location of all the three mobile was of the same place which established the allegations of the complainant as made in the FIR. He submitted that

the victim was admitted in PGI, Rohtak on 26th April, 2021 and when her condition started deteriorating then she was put on the ventilator in the evening on 29th April, 2021. He has clarified the contentions raised by the counsel for the petitioner that when the victim was on ventilator in the hospital, there was no occasion for the victim to narrate the incidents to her father as asserted in the FIR. He clarifies that the complainant father reached Delhi in the morning on 29th April, 2021 whereas, the victim was put on the ventilator in the evening of 29th April, 2021 and thus, the father and the victim were together throughout the day when the victim was without the ventilator and hence, there is no occasion to doubt the narration of the complete incidents that happened with the victim to her father. Unfortunately, the victim died on 30th April, 2021. Besides this, learned Addl. AG has drawn the attention of this Court to the status report filed wherein, the petitioners abducted the victim and it was on the timely intervention of the senior leaders that they had to bring her back. Learned State counsel vehemently argued that from the overall facts and circumstances, the case is of highly sensitive nature which requires a thorough investigation. He contends that in the case in hand the custodial interrogation is must as the prosecuting agency has to effect the recoveries of the mobiles and interrogate the petitioner to unravel the truth.

Ms. Megha Bahl, Advocate appeared for the complainant and has vehemently opposed the prayer made by counsel for the petitioner. She has submitted that from the CDMR, the location established of the accused was somewhere around Hansi in Haryana. She further submits that out of six accused, only one has been arrested and rest five are at

large whereas, the case involves a heinous crime and the victim needs a complete justice. Therefore, the petitioner deserves no leniency and the anticipatory bail deserves to be dismissed.

I have heard counsel for the parties and appreciated the record produced.

Needless to say that the allegations pertains to a serious crime. A free and fair investigation is the backbone of every criminal trial. The criminal trial is a discovery in pursuit of the truth. Without a thorough free and fair investigation, the trial becomes a futile exercise. This Court is presently seized of the anticipatory bail prayed by the petitioner. Counsel for the petitioner though has rightly argued that in the present case neither there is any statement of the prosecutrix nor any medical conducted but the investigation conducted so far cannot be ignored. On the query put by this Court to the learned State counsel for the clarification of this lapse, the answer to the same was that at that time there was no such doubt regarding the foul play with the victim. On the other hand, as the victim was tested COVID-19, therefore, no postmortem of the victim was carried out. However, the complete narration of the incidents to her father which is being investigated by the police, from the call details and the disclosure of the co-accused there is no doubt left in the mind of the Court that allegations levelled in the FIR are serious and needs a thorough investigation. Learned State counsel has brought it to the notice of this Court that from the disclosure statement of the co-accused Anil Malik, his mobile phone as well as the car used in the alleged abduction of the victim had been recovered and the investigation carried so far is pointing towards the complicity of the petitioner.

Primarily, the Courts are required to take into consideration the factors like the gravity of the offences, the probability of the accused tampering with the investigation and his chances of fleeing from the justice while granting the relief of anticipatory bail. Applying the said ratio laid down, to the facts and circumstances of the present case, the petitioner does not deserve the concession of the anticipatory bail as the prayer for the custodial interrogation by the prosecution appears to be justified. The Court cannot ignore the fact that the co-accused Ankur whose prayer for the anticipatory bail has already been declined by the Coordinate Bench carried the allegations of outraging the modesty of the victim, whereas, in the investigation carried so far, the complicity of the present petitioner is since beginning and there are specific allegations of rape and abduction against him. Thus, this Court cannot compromise with the quality of free and fair investigation by enlarging the petitioner on anticipatory bail. The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997) 7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that

responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, points towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

In view of the discussion made above, the present petition being devoid of any merit is dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

04.08.2021
m. sharma

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