

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

212

**CRM-M-36019-2020
Date of decision: 19.01.2021**

Samir

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gursimran Singh Madaan, Advocate
for the petitioner.

Mr. P.S. Walia, Asstt. AG, Punjab
for the respondent-State.

None for the complainant.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") for grant of anticipatory bail in case FIR No.97 dated 08.10.2020 registered under Sections 363 and 366-A of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Talwara, District Hoshiarpur to which Sections 376, 342, 506 and 120- B of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 were added lateron.

Vide order dated 02.12.2020, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation and the relevant part of the said order reads as under:-

“The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.97 dated 08.10.2020

registered under Sections 363 and 366-A of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Talwara, District Hoshiarpur to which Sections 376, 342, 506 and 120- B of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 were added lateron.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. Ankush- brother of the petitioner had love affair with the prosecutrix/victim. The brother of the prosecutrix/victim caught her while talking to Ankush on mobile phone and gave a beating to her. On the intervening night of 7/8 of October 2020 the prosecutrix/victim left home and came to the house of the petitioner. The father of the petitioner questioned Ankush as to why the prosecutrix/victim had come to the house at late hours but the father of the petitioner did not inform the police. As per her MLR the prosecutrix/victim had not been subjected to any sexual act. Even as per statement of the prosecutrix/victim the petitioner is not alleged to have committed rape on her. Ankush has been arrested and he is in custody. The petitioner is ready to join the investigation and his custodial interrogation is not required in the case.

Learned for the complainant has submitted that in her statement under Section 164 of the Cr.P.C. the prosecutrix/victim has implicated the petitioner and his father to have maltreated her by giving beating to her and that the prosecutrix/victim was found lying in the bushes in the back of the house of the petitioner with her hands tied. Learned counsel for the complainant has further submitted that there is a video clip regarding the same.

In the Course of hearing learned counsel for the complainant was asked to send the video clip in the whatsapp group which has been accordingly sent. I have

seen the video clip in which the prosecutrix/victim is seen lying on the road in the back of the vehicle parked in the middle of the road nearby and her hands are not tied and she is not lying in the bushes as claimed.

Learned State counsel and learned counsel for the complainant also seek time to file reply.

Adjourned to 19.01.2021.

Reply by learned State counsel and learned counsel for the complainant along with copies of relevant documents be filed in the Registry before the date fixed.

In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. In the event of his arrest, the petitioner shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which he shall not be entitled to the protection of interim bail allowed to him.”

The petition has been opposed by the respondent-State and by the complainant. However, no reply has been filed by the respondent-State or the complainant.

None has appeared for the complainant today.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has, while reiterating submissions made on 02.12.2020, submitted that in compliance with order dated 02.12.2020, the petitioner has joined the investigation.

On the other hand, learned State Counsel has vehemently opposed the petition and submitted that in view of gravity of accusation, the petitioner does not deserve grant of anticipatory bail.

Therefore, the petition may be dismissed.

However, learned State Counsel has, on instructions from SI Dharminder Singh, acknowledged that in compliance with order dated 02.12.2020 passed by this Court, the petitioner has joined the investigation and that his custodial interrogation in the present case is not required for effecting any recovery.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that custodial interrogation of the petitioner is not required in the case and there is no material to justify the apprehension of the petitioner fleeing from justice or tempering with evidence or criminally intimidating the prosecution witnesses but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 02.12.2020 granting interim bail to the petitioner is made absolute. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to him.

19.01.2021

Vishal

(ARUN KUMAR TYAGI)
JUDGE

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