

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

202

CRM-M-37328-2020

Date of decision: 18.02.2021

Nikhil Kapoor

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

Mr. Ashish Sanghi, Advocate
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, "the Cr.P.C") for grant of anticipatory bail in case FIR No.433 dated 08.10.2020 registered under Sections 354, 506 and 509 read with Section 34 of the Indian Penal Code, 1860 at Police Station Mahesh Nagar, District Ambala.

The above said FIR was registered on statement of Neha Kapoor. In her statement Neha Kapoor alleged that her husband is working in Navy and she is residing with her two children on the first floor of the house and her brother-in-law Nikhil Kapoor (the petitioner) and father-in-law Dr. G.G. Kapoor are residing on the ground floor. She had employed labourers for repair of the first floor and on 08.10.2020, at about 5:20 P.M. when the labourers came down, then her

brother-in-law Nikhil Kapoor (the petitioner) and father-in-law Dr.G.G.Kapoor, started abusing her labourers and when on hearing the noise, she came down then her brother-in-law and father-in-law started abusing her. When she asked them not to abuse, then her brother-in-law caught hold of her from her neck and tore off her shirt and threatened to kill her.

Vide order dated 27.11.2020, Co-ordinate Bench of this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation.

The petition has been opposed by the respondent-State in terms of status report filed by way of affidavit of Ram Kumar, HPS, Deputy Superintendent of Police, Ambala Cantt. District Ambala which has already been taken on record and status report filed by way of affidavit of Rajesh Kalia, Superintendent of Police, Ambala, District Ambala in the Registry of this Court which is also taken on record.

The petition has also been opposed by the complainant. However, no reply has been filed by the complainant.

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

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. The complainant could not adjust in the joint family and shifted with her husband to the first floor of the house. The staircase to the first floor goes from within the ground floor of the house where the petitioner is residing with his wife and children and old father. The brother of the petitioner got

transfer deed dated 01.07.2016 executed in his favour in respect of 253.33 sq. yds. exceeding 50% 200 sq. yds. The brother of the petitioner and the complainant did not take care of father of the petitioner who filed petition under Sections 23(1) and 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 with prayer for cancellation of the transfer also. On 08.10.2020, the labourers were coming and going through the stairs without wearing proper mask and were advised to wear mask on which the complainant came rushing to the ground floor and started abusing the father of the petitioner and when wife of the petitioner came out she started abusing her. Due to this altercation the complainant lodged the present FIR on false and concocted allegations of outraging her modesty. The petitioner has already joined the investigation and his custodial interrogation is not required in the case. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel and learned Counsel for the complainant have vehemently opposed the petition and submitted that the petitioner outraged the modesty of the complainant by catching hold of her by neck and tearing her shirt. The petitioner and his wife also intimidated PW Rani to make statement in favour of the petitioner. In view of nature of accusation and gravity of offences, the petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

However, learned State Counsel has, on instructions from Lady Head Constable Simranjeet Kaur, acknowledged that in compliance with order dated 27.11.2020 passed by Co-ordinate Bench

of this Court, the petitioner has joined the investigation and that his custodial interrogation is not required in the case.

In the present case the petitioner and the complainant, who is wife of brother of the petitioner, are members of the same family and are living in the same house regarding which there is dispute between them giving rise to litigation and altercation leading to registration of calendra and also the present FIR.

The questions regarding outraging of modesty of the complainant by the petitioner and intimidation by the petitioner and his wife of PW Rani, who is alleged to have made contradictory statements regarding the occurrence have to be determined on the basis of evidence to be produced during trial.

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 tampering 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 27.11.2020 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 following conditions enumerated in Section 438(2) of the Cr.P.C.:-

- (i) that the petitioner shall make himself available for interrogation by the concerned police officer as and

when required;

- (ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer; and
- (iii) that the petitioner shall not leave India without the previous permission of the court.

In case the petitioner fails to comply with the above said conditions then the protection of anticipatory bail order shall not be available to him.

18.02.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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