

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

207

CRM-M-45293-2021.

Date of Decision: 25.11.2021.

Shekhar Mahajan @ Lucky

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Amandeep Singh, Advocate for petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Lalit Batra, J.(Oral)

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Shekhar Mahajan @ Lucky** in case FIR No.224 dated 23.08.2021 under Sections 120-B and 377 IPC, Section 68 of Information Technology Act and Section 4 of Protection of Children from Sexual Offences Act, registered at Police Station Salem Tabri, District Police Commissionerate, Ludhiana.

In compliance of order dated 29.10.2021, status report dated 17.11.2021 by way of affidavit of Dharam Paul, PPS, Assistant Commissioner of Police (North), Ludhiana, alongwith Annexure R-1, already filed on behalf of respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly on 21.08.2021 at about 9:00 PM, petitioner alongwith co-accused Michael Mattu @ Ashu

by threatening victim (minor son of complainant-Nirmal Singh), took him (victim) at the house of petitioner, where petitioner committed carnal intercourse against the order of nature with above said victim, whereas co-accused Michael Mattu @ Ashu videographed the said incident. He further urges that as per version of victim in the Medico Legal Report (Annexure P-2), alleged incident took place about three months back, whereas as per version of complainant in the FIR, alleged incident took place two days back. He further submits that complainant-Nirmal Singh has furnished affidavit before Executive Magistrate stating therein that no such incident, as alleged in the FIR, had ever taken place. He further urges that matter has already been compromised between complainant-Nirmal Singh and the petitioner as well as co-accused Michael Mattu @ Ashu. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that on 21.08.2021 at about 9:00 PM, petitioner in conspiracy with co-accused Michael Mattu @ Ashu committed carnal intercourse against the order of nature with the victim, a minor boy, whereas co-accused Michael Mattu @ Ashu videographed the said incident and further they threatened to make the video viral and later on uploaded the said video on the internet. He further urges that Medico Legal Report (Annexure R-1) of victim highlights injury on the person of victim. He further urges that petitioner has been specifically named in the FIR and

in view of nature of offence committed by him, entering into any compromise by complainant-Nirmal Singh with the petitioner, vide compromise deed dated 18.10.2021 (Annexure P-4) has no significance as victim is a minor boy. He further submits that custodial interrogation of petitioner is required to unveil the truth and for comparison of the DNA profile as well as to know the whereabouts of co-accused Michael Mattu @ Ashu, who is still at large, therefore, the petitioner is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition, status report dated 17.11.2021 filed by respondent-State as well as record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner in conspiracy with co-accused Michael Mattu @ Ashu committed carnal intercourse against the order of nature with the victim, a minor boy and further above said incident was videographed so as to make the said incident viral in the public domain and then uploaded the said video on the internet. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation

is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement of pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

25.11.2021

jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No