

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

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**CRM-M-42291-2020
Date of decision: 19.01.2021**

Savita and another

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sushil Sheoran, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana
for respondent No.1-State.

Ms. Swati Batra, Advocate
for respondent No.2/prosecutrix.

ARUN KUMAR TYAGI, J. (ORAL)

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

Petitioners-**Savita and Vijaypal** have 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.24 dated 26.11.2020 registered under Sections 376(2)(n), 109 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") and Section 6 of the Protection of Children from Sexual Offences Act, 2012 in Police Station Women Dadri, District Charkhi Dadri.

The above said FIR was registered on statement of the prosecutrix on the allegations that in December, 2014 petitioner No.2 committed rape on the prosecutrix which was facilitated by petitioner No.1.

While issuing notice of motion on 16.12.2020, this Court

had granted interim anticipatory bail to the petitioner with direction to join the investigation.

The petition has been opposed by the learned State Counsel in terms of reply filed by way of affidavit of Ram Singh, HPS, Deputy Superintendent of Police, Charkhi Dadri on behalf of respondent No.1-State in the Registry which is taken on record.

Notice of the petition was also issued to respondent No.2/prosecutrix who has put in appearance through Ms. Swati Batra, Advocate and she undertakes to file her power of attorney in the Registry.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2/prosecutrix and have gone through the record.

Learned Counsel for the petitioners has submitted that the petitioners have been falsely implicated in the case. The prosecutrix is real sister of petitioner No.1 and sister-in-law of petitioner No.2 who is husband of petitioner No.1. The parents of petitioner No.1 took the amount of Rs.22 lakhs from the petitioners for solemnizing the marriage of their another daughter and the mother of petitioner No.1 issued a cheque for repayment of the same which was dishonoured. Petitioner No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 in which non-bailable warrant of arrest was issued against the mother of petitioner No.1. The present FIR has been lodged as a counter-blast to pressurize the petitioners for withdrawal of the above said complaint. The alleged occurrence took place in December, 2014 but the present FIR has been lodged with undue and

unexplained delay of about 6 years. Earlier also the prosecutrix had lodged FIR No.305 dated 10.10.2020 under Sections 354(A)(2), 323 and 506 read with Section 34 of the IPC in Police Station Civil Lines, Bhiwani in which the petitioners were granted anticipatory bail by learned Sessions Judge, Bhiwani vide order dated 02.11.2020.

On the other hand, learned State Counsel has submitted that the petitioners are alleged to have committed heinous offences and they do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

Learned Counsel for respondent No.2/prosecutrix has submitted that petitioner No.2 committed rape on the prosecutrix while petitioner No.1 facilitated the same. The prosecutrix was a child at the time of commission of alleged offences. Since the matter involved honour of the prosecutrix the delay in lodging of the FIR is properly explained. In view of nature of accusation and heinous nature of the offences committed, the petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioners and also the delay in lodging of the FIR and the fact that custodial interrogation of the petitioners is not required in the case and there is no material to justify the apprehension of the petitioners 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 petitioners deserve the grant of anticipatory bail.

In view of the above, the petition is allowed and petitioners-**Savita and Vijaypal** are directed to join the investigation by appearing before the SHO/Investigating Officer of the case as and when called upon by written notice to do so. In the event of their arrest, the petitioners shall be released on bail by the arresting officer/investigating officer on furnishing of bail bonds by them to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall not be entitled to the protection of anticipatory bail allowed to them.

19.01.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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