

106

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

CRM-M-48338-2021

Date of Decision: November 18, 2021

Kushila @ Kaushalya Devi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Vikas Bali, Advocate for the petitioner.

.....

RAJESH BHARDWAJ, J.

This is the second petition filed under Section 438 Cr.P.C. praying for grant of anticipatory bail in case FIR No.49, dated 03.05.2021, registered under Sections 363, 366-A, 376 IPC and Section 4 of Protection of Children from Sexual Offence Act at Police Station Meharban, Ludhiana.

As per the factual matrix of the case, the present FIR was lodged by Lakhvir Chand s/o Lal Chand wherein it was alleged that her elder daughter is studying in 10+1 standard and her date of birth is 19.03.2005. His brother-in-law's wife Kushila Devi, i.e. the petitioner was not feeling well due to which his wife Raj Rani dropped his daughter (victim) at her place. It was alleged that on 27.04.2021 at around 7.00 p.m. Dharamvir @ Manga kidnapped his daughter from outside his house by alluring her on the pretext of marriage. On 28.04.2021, petitioner- Kushila Devi brought back the victim to the house of the complainant from the custody of Dharamvir @ Manga. On her return, the victim was traumatized and she disclosed that on 27.04.2021 during night time Dharamvir @ Manga took her to a room

wherein he committed rape upon her without her consent. His daughter was kidnapped by Dharavir @ Manga and his brother-in-law's wife, Kushila, was also involved in the same. It was requested that action be taken against accused for kidnapping and committing rape upon his minor daughter.

Apprehending arrest, the petitioner filed the application for grant of anticipatory bail before the Additional Sessions Judge/FTSC under POCSO Act, Ludhiana. After hearing the parties, vide order dated 19.05.2021, the learned Additional Sessions Judge, Ludhiana, dismissed the same.

Aggrieved by the same, the petitioner approached this Court by way of filing of CRM-M-21654-2021, which came up for hearing before this Court on 13.07.2021 in which counsel for the petitioner after arguing for some time, made a prayer for withdrawal of the same and hence, the same was allowed to be withdrawn vide order dated 13.07.2021. The order has been placed on record as Annexure P-8.

Now the petitioner has filed this second bail application praying for the same relief.

It has been contended by learned counsel for the petitioner that there is a change of circumstances for the reasons that the material witnesses have not supported the case of the prosecution before the trial Court while deposing before the trial Court on the trial pertaining to co-accused Dharamvir@ Manga and hence the petitioner be granted the protection under Section 438 Cr.P.C.

I have heard learned counsel for the petitioner and perused the record.

It is apparent that the learned Additional Sessions Judge,

Ludhiana, declined the prayer of the petitioner vide its order dated 19.05.2021 and this Court allowed the petitioner to withdraw his petition after arguing for some time vide its order dated 13.07.2021. Thereafter, the challan had been filed against the co-accused-Dharamvir @ Manga and the trial is going on. The only argument raised by the counsel for the petitioner is that the material witnesses have not supported the case of the prosecution qua Dharamvir @ Manga and hence the petitioner be granted the concession of anticipatory bail.

However, it is apparent that the petitioner is not arrested till date and hence, the investigation qua the petitioner is incomplete as on date. There is no challan filed by the prosecuting agency against the petitioner, hence, no benefit of anticipatory bail can be granted to the petitioner.

The petition being devoid of any merit is hereby dismissed.

November 18, 2021
meenuss

(RAJESH BHARDWAJ)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No