

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

CRM-M-8305-2020

Date of decision : 16.08.2022

Ram Niwas

.....Petitioner

versus

UT, Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Shilak Ram Hooda, Advocate
for the petitioner.

Mr. J.S. Toor, Addl. PP, UT Chandigarh.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of anticipatory bail in case bearing FIR No.167 dated 19.06.2015, under Sections 406, 498-A of Indian Penal Code, registered at Police Station Sector-31, Chandigarh.

It was alleged by the complainant-wife that her marriage took place with the petitioner Ram Niwas on 15.02.2001 at Chandigarh as per Christian rites and customs. Her parents gave sufficient dowry in the marriage as per their capacity. However, her husband was not happy with the gifts given by the parents. She made a complaint to the Women Cell, Chandigarh where her husband apologised and assured not to harass her in the future. However, after passing of some time thereafter, he again started harassing her and used to beat her on petty issues. In January, 2013 while she was pregnant, her husband gave her severe beatings and due to the same, her pregnancy got terminated. Her husband had even extramarital affairs. Being aggrieved, complainant lodged the FIR with request to take the legal action against the accused. Apprehending his

arrest, the petitioner approached the Court of learned Additional Sessions Judge, Chandigarh praying for grant of anticipatory bail. After hearing counsel for the parties, learned Additional Sessions Judge declined the same vide her order dated 10.02.2020. Aggrieved by the same, petitioner is before this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner submits that the parties were directed to appear before the Mediation Centre and in the meantime, arrest of the petitioner was stayed. He submits that thereafter, the parties were referred to the Mediation Centre, however, the same did not take place.

Learned State counsel however, submits that from the perusal of the record, it is apparent that arrest warrants were issued against the petitioner as he was declared proclaimed person vide order dated 06.09.2016. The prosecution closed its evidence and the petitioner was re-arrested on 20.08.2018. Thereafter, he again did not appear before the trial Court and his arrest warrants were issued. He submits that the petitioner himself is not adhering to the order passed by this Court and hence, he does not deserve the concession of anticipatory bail.

After hearing counsel for the parties and perusing the record, it is apparent that the petitioner was declared proclaimed person vide order dated 06.09.2016. Thereafter, he was re-arrested on 20.08.2018 and was granted concession of bail vide order dated 15.10.2018. Thereafter, he again did not appear before the trial Court on 26.09.2019 and his arrest warrants were issued.

As per the settled proposition of law, the Court is to keep into mind the statutory parameters given under Section 438(1) Cr.P.C.

which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But

the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced

with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Keeping in view the submissions made by counsel for the State and the antecedents of the petitioner, this Court is of the opinion that the petitioner does not deserve the concession of anticipatory bail. Hence, the petition being devoid of any merits, is hereby dismissed.

16.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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