

101

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11080-2022

Date of Decision: March 16, 2022

Rajan Kumar and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Mohan Sharma, Advocate
for the petitioners.

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RAJESH BHARDWAJ, J.(ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioners in case FIR No.14, dated 23.01.2022, Annexure P-1, under Sections 354, 323, 509, 427 and 34 IPC, registered at Police Station Sirhind, District Fatehgarh Sahib.

As per the facts, the present FIR was lodged by the prosecutrix wherein it had been alleged that she was working as Sales staff at Babu Jewellers, Sirhind and there were about ten girls working there. It was further alleged that in the bad weather the driver Beant Singh used to drop all the girls at home in a car. On 22.01.2022, due to extreme rain, she told her Manager Hardev Singh to drop her at her home and accordingly, driver Beant Singh was assigned the duty to drop her at her home. On the way,

another car driver and a motor-cycle driver, as the motor-cycle got hit into that car. When the prosecutrix sat in the car, the another car which had rammed into motorcycle, hit the car of the prosecutrix twice. On stopping of the car, the prosecutrix opened the car window and asked the person who hit the car as to why he had hit his car to their car. Then a person, namely, Papli held the prosecutrix from her arms and took her out of the car. They hit her and teased her also. The phone of the prosecutrix was broken. One of the accused was named as Rajan Kumar, another one was Papli, the third one was Moni whereas the fourth person was unknown. The request was made to take legal action against them.

Apprehending the arrest, the petitioners approached the Court of learned Sessions Judge, Fatehgarh Sahib, who after hearing, declined the same vide its order dated 10.02.2022. Aggrieved by the same, the petitioners approached this Court.

Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in this case. It is submitted that there is a delay of 24 hours in lodging the FIR. He has further submitted that it was the fault of the driver of the car belonging to the prosecutrix, which collided against the parallel going car. He submits that the complainant and the present petitioners were trying to stop both the car drivers and in that process some heated exchange of arguments ensued due to which the present occurrence took place. He has submitted that in view of the above facts, custodial interrogation of the petitioners is not required, however, they are ready to abide by all the terms and conditions of the anticipatory bail, if this Court considers their prayer for granting the same.

Heard.

After hearing the arguments of learned counsel for the petitioners and perusing the record, it is apparent that there are specific allegations of molesting the prosecutrix. Even in the statement recorded under Section 164 Cr.P.C. the allegations in the FIR were reiterated. On perusal of the order passed by learned Sessions Judge, it is apparent that this is not the first offence committed by the petitioners, rather, their antecedents are also in question. Petitioner No.1-Rajan Kumar has been involved in following criminal cases:-

- “1. FIR No.58/2014 under Sections 323/341 of IPC, Police Station Sirhind;
2. FIR No.250/2019 under Sections 457/380/429 of IPC, Police Station, Sirhind;
3. FIR No.115/2021, under Sections 447/506/511/34 of IPC, Police Station, Sirhind.”

And petitioner No.2-Gurpreet Singh alias Papli has been involved in FIR No.174/2012, under Section 25 of the Arms Act, Police Station Fatehgarh Sahib.

For the consideration of the anticipatory bail, the statutory provisions of Sections 438(1) Cr.P.C. are very clear which prescribes the factors like gravity of the offence, antecedents of the petitioners, probability of the petitioners fleeing from justice, chances of tampering with the evidence to be taken into consideration. In **Gurbaksh Singh Sibbia and others vs state of Punjab**, AIR 1980 SC 1632 Hon'ble Supreme Court of India has laid down that the Courts while dealing with the anticipatory bail has to strike the balance between the personal liberty and the overall interest of the society. However, the overall interest of the society will also prevail upon the personal liberty of the individual.

After viewing the facts and circumstances of the present case,

the law settled and the statutory provisions, this Court finds that the case in hand does not qualify for exercise of extraordinary jurisdiction under Section 438 Cr.P.C. in favour of the petitioners. Hence, the petition being devoid of any merit is hereby dismissed.

March 16, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |