

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

CRM-M-25146-2022

Date of decision : 02.06.2022

Dinesh Kumar

..... Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vinod Ghai, Senior Advocate with
Mr. Edward Augustine George, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of pre-arrest bail in case FIR No.0089 dated 08.04.2022, under Section 376 of Indian Penal Code and Section 4 of POCSO Act, 2012 (Amended in 2019), registered at Police Station Division No.6, District Police Commissionerate Ludhiana, District Ludhiana.

As per facts of the case, the FIR has been lodged by the victim who is minor. It was alleged that she is student of 10+2 and studying in the Government School, Dholewal at Ludhiana. Her teacher Dinesh Kumar (petitioner) was teaching the subject of Civil Engineering and during this period, the relationship developed between them and on one day, he demanded her mobile number from her which she gave. With the passing of time, they became good friends and accused Dinesh Kumar expressed his desire to marry the victim. On 2nd May, 2021, he asked her to accompany him and they both went to Devi Talab Mandir. On the pretext of introducing her to his relatives, he took her in a nearby house where two more unknown persons were present. Thereafter, both those persons were sent out and by taking her in confidence to marry her, he

established physical relations with her. When she felt pain and started bleeding, he gave her 2-3 tablets. He told her that they would solemnize marriage after some time. Thereafter, he called her many times in Hotel OYO, Bus Stand, Ludhiana and on the same pretext of solemnizing the marriage with the victim, he kept on making physical relations with her. After some time, she realized that the accused has cheated her as he asked her to do whatever he wanted and he was not going to solemnize marriage with her. His friends came to her house and abused her family members and threatened to murder her. The family members of the accused also abused the victim and proclaimed that they would solemnize the marriage of the accused in a rich family. Accused Dinesh Kumar had also made her indecent videos and photos and threatened her that in case she tried to proceed against them, he would make her obscene photos viral on social media. She also alleged that taking into consideration the activity of Dinesh Kumar, he was removed from the school by the authorities. As the accused committed rape on the minor victim and kept on giving threats to the victim and the family members, the FIR was lodged to take the legal action against the culprits. Apprehending arrest, the petitioner approached the learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, Ludhiana praying for the grant of pre-arrest bail. After hearing both the sides, learned Additional Sessions Judge, Fast Track Special Court has declined the same vide order dated 6th May, 2022. Aggrieved by the same, the petitioner has approached this Court by way of the present petition.

Learned senior counsel assisted by Mr. Edward Augustine George, Advocate has vehemently argued that the petitioner has been

falsely and frivolously implicated in this case. He submits that the relationship between the petitioner and the prosecutrix was totally consensual. He has also submitted that there are overwhelming evidence including whatsapp chats between the petitioner and the alleged victim showing that the victim herself had established friendship with the petitioner. He has submitted that the petitioner promised the victim to marry after she would attain the age of majority. It was the victim who consensually entered into the relationship with the petitioner and there was no coercion or misrepresentation by the petitioner. He has relied upon **Pramod Suryabhan Pawar vs The State of Maharashtra and others (2019) 9 SCC 608** and submits that in view of the law settled therein, no offence under Section 376 IPC is made out. He submits that in view of the law settled by the Hon'ble Supreme Court as the consent of the victim was not vitiated by the misconception of fact thus, the relationship between the petitioner and the victim even if the allegations are taken to be true or are assumed to be true, would not attract the offence under Section 376 Cr.P.C. He has submitted that the petitioner deserves to be granted anticipatory bail.

I have heard counsel for the petitioner and perused the records.

As per the case of the prosecution, the victim is minor. The petitioner is being prosecuted for the offence under Section 376 IPC and Section 4 of POCSO Act. Sections 29 and 30 of the POCSO Act attracts the presumption against the petitioner. The investigation of the case is at the nascent stage. The arguments raised by the learned senior counsel, do not dilute the statutory provisions of the Act at this stage. There is no dispute

regarding the judicial precedent of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner, however, in the facts and circumstances of the same, the same is distinguishable.

For the consideration of granting anticipatory bail, the Court is to take into consideration the relevant factors like gravity of the offence, the probability of the accused tampering with the ongoing investigation and his chances of fleeing from the justice. Undoubtedly, the facts and circumstances of the case *prima facie* construed heinous offence against the minor. A thorough and fair investigation is required to unravel the truth in the allegations levelled. Hence, quality of investigation cannot be compromised in any circumstances.

Hon'ble the Supreme Court in State (rep by CBI) Vs. Anil Sharma, (1997) 7 SCC 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 overall facts and circumstances, this Court is of the opinion that the petitioner do not qualify for the grant of anticipatory bail on the anvil of the statutory provisions of the law settled. Thus, the petition being devoid of any merits is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

02.06.2022
m.sharma

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No