

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

CRM-M-26936-2022

Date of decision : 18.07.2022

Gurpreet Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vinod Kumar Kaushal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.274 dated 30.08.2021, under Section 376 of IPC and Section 4 of POCSO Act (Amended) 2012, 2019, registered at Police Station Ajnala, District Amritsar.

As per the factual matrix of the case, the complaint was lodged by the prosecutrix (name concealed). It was alleged that she is 17 years of age and was working at the brick kiln. Gurpreet Singh i.e. the accused also used to work in the brick kiln along with her. On 25.08.2021 when she was alone at home, Gurpreet Singh on the pretext of giving the prosecutrix some work took her on motorcycle. Thereafter, he took her to one hotel near Darbar Sahib. There he forcibly committed rape upon the prosecutrix. On the basis of the complaint, the FIR was lodged and the investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Fast Track Court, Amritsar praying for grant of pre-arrest bail. However, after hearing counsel for the parties, the same was declined vide order dated 19.04.2022. Aggrieved by the same, the petitioner is before this Court for

grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that petitioner is 19 years of age and he intended to marry the prosecutrix against the wishes of her father and for the same reason, he has been implicated in this case. His precise emphasis is on the alleged compromise arrived at between the petitioner and the prosecutrix. He submits that as the matter is settled between the parties, petitioner deserves to be granted anticipatory bail.

Heard.

After hearing the arguments of learned counsel for the petitioner and perusing the record, it is apparent that the prosecutrix is minor being less than 18 years of age. There are specific allegations pertaining to the rape committed by the petitioner with the prosecutrix. As per the statutory provisions of Sections 29 and 30 of POCSO Act, there lies an presumption against the accused. Even otherwise, the compromise as contended has no legal sanctity and the same is of no significance.

For the consideration of anticipatory bail, the statutory parameters are 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 also 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.

Keeping in view the facts and circumstances of the case on the anvil of the settled law, the Court finds no merit in the petition. 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.

18.07.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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