

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

203

CRM-M-32429-2021(O&M)

Date of decision: 18.04.2022

RAJIV KHANNA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Rahul Bhargava, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG Punjab.

Mr. D.S. Matya, Advocate
for the complainant.

VINOD S. BHARDWAJ. J. (ORAL)

Prayer in this petition filed under Section 438 CrPC is for grant of anticipatory bail to the petitioner in case FIR No.195 dated 06.07.2021 under Sections 295-A, 506 and 34 of the IPC registered at Police Station Kamboj District Amritsar.

The matter came up for hearing on 22.09.2021, when the following order was passed:-

“Case heard by way of video conferencing.

Pursuant to the order passed by this court on 14.09.2021, an affidavit dated 20.09.2021, executed by the Principal Secretary to the Government of Punjab, Department of Home Affairs and Justice, has been filed, stating therein that as on 20.09.2021, Section 295AA has not been incorporated in the Indian Penal Code by the State of Punjab, as the “assent of President of India to ‘The Code of Criminal Procedure (Punjab Amendment) Bill, 2018’ and ‘The Indian Penal Code (Punjab Amendment)

Bill, 2018' has not been received."

That affidavit, as also the affidavit filed in reply to the petition by the DSP, Attari, dated 16.09.2021, are ordered to be taken on record.

Obviously, the forceful assertion of counsel for the complainant on an earlier date that the aforesaid provision has been incorporated in the IPC qua the State of Punjab, was wholly a misleading statement.

The petitioner not having been admitted to interim bail for the reasons stated in the order dated August 24, 2021, thereafter on 14.09.2021, the following order was passed:-

"Case heard by way of video conferencing. The first issue that has arisen again today in this petition is whether at all the present petition is maintainable, with Mr. Matya, learned counsel for the complainant, again submitting that Section 295AA has been incorporated in the IPC vide a Bill passed by the Punjab Vidhan Sabha in the year 2018, stipulating that pre-arrest bail would not be granted.

Upon query to the learned State counsel, he submits that though the Bill had been passed and had been sent to the President of India for assent, it had been returned at that stage on the ground that it did not take into consideration any other holy scripture other than the Shri Guru Granth Sahib, after which, as per his instructions so far, all other holy scriptures of all other major religions in India were incorporated in the Bill; but he has still not been instructed as to whether the Bill has finally received the assent of the President of India and now stands incorporated in the IPC or not (at least qua the State of Punjab) and he needs to take instructions in that regard.

Adjourned to 22.09.2021.

The Addl. Chief Secretary, Home, Government of Punjab, is directed to file a short affidavit by that date, stating as to whether Section 295AA has been incorporated in the

IPC for the State of Punjab or not, after receiving due assent of the President of India.

A short date is being given because this is a petition by which the petitioner is seeking to be admitted to pre-arrest bail, with the petition having been filed on 06.08.2021, i.e. more than one month ago.

Consequently, though Mr. Rana has submitted that he has with him an affidavit executed by Sh. Balbir Singh, DSP, Sub-Division Attari, Amritsar, dated 02.09.2021, in which it has been stated that Section 295AA has not been incorporated in the statute as yet, however, since Mr. Matya is of the 'opinion' that it has been so incorporated, the Addl. Chief Secretary, Home, Government of Punjab, would file a very short affidavit simply to the aforesaid effect.

In the meanwhile, since nothing is shown from the Statute book that there is a bar granting pre-arrest bail, but there is a controversy on that, the petitioner is not being admitted to bail as yet, but for due consideration on that issue (on the maintainability of the petition), it is directed that he be not arrested till the next date of hearing only and specifically, with it made clear that any request made on behalf of the petitioner would result in immediate vacation of the interim order, with no further order required to be passed in that regard.

To be shown in the urgent motion list. It is submitted by Mr. Matya that in fact he did not appear on the last date of hearing not because it was past 4.00 p.m. by the time the turn of the case came up, but because the complainant was under threat by the wife of the petitioner that she would commit suicide if the complaint was not withdrawn.

No comment is made by this court at this stage with regard to that contention, which has been noticed because it has been made.

In the meanwhile, the reply stated to have been received by the learned State counsel would be filed in the Registry, with a copy thereof to be supplied to the learned counsel for the complainant, learned counsel for the petitioner already having received the copy of the said reply.”

Obviously, the issue of anticipatory bail being inadmissible in all circumstances, in view of the proposed amendment by way of Section 295AA to the IPC (qua the State of Punjab), not being an issue any longer in view of the affidavit of the Principal Secretary, Home, Government of Punjab, as regards the merit of the case, the affidavit of the DSP virtually reiterates what is alleged in the FIR, but with him also stating in paragraph 3 of the preliminary submissions, that after the petitioner had posted inappropriate/morphed pictures on 05.07.2021, which would hurt the religious sentiments of a section of society, thereafter on 06.07.2021, i.e. The next day, on the same social medial platform, he also tendered an apology, stating as follows: “Jai Shree Ram, the post which was sent yesterday night from my number on whatsapp, I had not posted the same for hurting any religious sentiments, I accept it as my mistake and apologize for the same.”

It has been next stated by the DSP that with regard to the management of one Vrindavan Garden Society, the present dispute has arisen and that the petitioner having evaded arrest for so long, is not entitled to the concession of anticipatory bail. Learned counsel for the complainant again submits that the wife of the petitioner is threatening the complainant, as also the counsel who appeared for the complainant before the learned Addl. Sessions Judge, to the effect that if the complainant would not withdraw the complaint, she would commit suicide.

[He also submits that the phone recording of that conversation has been delivered to my residence this morning (since court is being held by way of video conferencing), though obviously no proper application to place on record any such recording has

been filed despite that allegation having been made even on the last date of hearing.]

Be that as it may, the allegation is against the petitioners' wife and not the petitioner as regards any threat meted out, which in any case, equally obviously, would also be considered upon such recording being placed on record, with the complainant also at liberty to produce it before the investigating officer.

In the meanwhile, in view of the fact that even as per the affidavit of the DSP, the petitioner also apologized on the next date itself, without making any comment on the actual merits of the case in any manner whatsoever, the petitioner is directed to join investigation within 5 days and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaq Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 07.10.2021.

An affidavit be also filed by the next date of hearing by a gazetted officer as to whether the petitioner has cooperated in the investigation or not, and if not, in what manner he is not cooperating; and as to what was found as regards the threats stated to have been meted out by the petitioners' wife to the complainant and his counsel."

Learned counsel for the petitioner, on resumed hearing, has apprised that pursuant to the order dated 22.09.2021, passed by this Court, the petitioner has joined investigation and is no longer required for investigation of the case.

Learned State counsel, on instructions from ASI Aman Singh corroborates the said averment and submits that the custodial interrogation of the

petitioner is not required for the purpose of investigation.

Mr. D.S. Matya, Advocate for the complainant has alleged that even the wife of the petitioner had extended a threat on a telephone call. He further submits that the material posted was objectionable and hurting the religion sentiments.

The said contention of the complainant does not find favour. The question involved before the Court is as to whether the concession of anticipatory bail is to be extended to the petitioner or not. Once the State is satisfied with the conduct of the petitioner of having joined investigation and being no longer required for custody, no purpose would be served by directing custodial detention of the petitioner. The recovery in question has already been effected.

Heard learned counsel for the parties.

Since the petitioner has joined the investigation and his custodial interrogation is not required, the present petition is allowed and the interim order dated 22.09.2021 is made absolute.

However, if required, the petitioner shall continue to join investigation as and when required to do so and shall abide by the terms and conditions, as laid down under Section 438(2) CrPC.

(VINOD S. BHARDWAJ)
JUDGE

April 18, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>