

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

CRM-M-32077-2022

Date of decision : 26.07.2022

Rakesh Kumar @ Keshi

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court by way of this petition praying for grant of anticipatory bail in case bearing FIR No.0074 dated 26.05.2022, under Sections 363, 366-A of IPC, registered at Police Station City Fazilka, District Fazilka.

As per facts of the case, the FIR was registered on the statement of Kewal Krishan i.e. father of the victim. The sum and substance of the allegations are that his youngest daughter i.e. the victim is 16 ½ years of age. On 18.05.2022 at about 02:00 PM, his son got a phone call that Rakesh Kumar @ Keshi i.e. the petitioner was taking his minor daughter on motorcycle towards railway station. On this, his son chased Rakesh Kumar and asked him about the whereabouts of his sister. Gagan son of Jassa Singh had earlier enticed away his daughter but in order to save the honour of the family, they did not report the matter. It was alleged that Jassa Singh and others had kept his daughter. It was alleged that till date, whereabouts of his daughter are not known and thus, legal action be taken against the culprits. On the basis of the complaint, FIR was lodged and the investigation commenced. The petitioner

apprehending his arrest, approached the Court of learned Additional Sessions Judge, Fast Track Special Court (POCSO), Fazilka praying for grant of anticipatory bail. However, after hearing both the sides, learned Fast Track Court declined the same vide order dated 13.07.2022. Aggrieved by the same, petitioner has approached this Court by way of present petition.

Learned counsel for the petitioner has vehemently contended that there is no evidence against the petitioner in this case. He submits that there is only a hearsay evidence against the petitioner. He submits that on 18.05.2022, son of the complainant caused injuries to the petitioner and the petitioner was admitted in the hospital where he was medically examined. The police also recorded his statement. He submits that thereafter, the present FIR was lodged after about 08 days i.e. on 26.05.2022 which is totally false. He submits that the main allegations are against co-accused Gagan and petitioner has no complicity whatsoever in this case.

However, learned State counsel has submitted before this Court that the prosecutrix is 16 ½ years of age and till date, the investigating agencies could not trace her. She has submitted that there are specific allegations against the petitioner and as the case is pending investigation, the custodial interrogation of the petitioner is essential in this case.

I have heard counsel for the parties and perused the record.

After hearing counsel for the parties and perusing the record, it is apparent that there are allegations against the petitioner of conniving with the co-accused. The prosecutrix is minor and she could not be traced

till date. The investigation in this case is at threshold.

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.

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 facts and circumstances of the present case, granting anticipatory bail to the petitioner would scuttle the ongoing investigation. Thus, in the overall facts and circumstances of the case, the Court is of the opinion that petitioner do not qualify for grant of anticipatory bail. 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.

26.07.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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