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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36425-2021
Date of decision : 28.01.2022

Saroj

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Arjun Sheoran, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

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.

Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.227 dated 14.07.2021, under Sections 313, 376(2)(N), 452, 506 IPC and Section 3 of SC/ST Act, registered at Police Station Uklana, Hisar, Haryana.

As per the factual matrix of the case, the present FIR was registered by the victim wherein, it was alleged that she has two children, elder son is 13 years of age and younger son is 8 years of age. Her husband died 7 years ago and hence, she and her mother-in-law are upbringing the

children by doing labour work. As the health of her younger son does not remain good, they took lot of medicines from the doctors. Having no relief, she came to know about one Dharambir whom they paid obeisance at Dharambir Maharaj Dham. Dharambir started exploiting the situation of the prosecutrix and he established forcible physical relations with her. He threatened to kill her. During that time, she got pregnant. When the pregnancy was about 5 ½ months, Dharambir took her to one hospital at Narwana on 09.07.2021 on a motorcycle and got the abortion done. Her brothers Suresh and Sandeep came to her and she told the reality to them. As she was afraid of Dharambir and hence, out of fear, she could not disclose it earlier. During the investigation, the complicity of the petitioner was found. Having apprehending her arrest, the petitioner approached the Additional Sessions Judge, Hisar, who after hearing both the sides, declined the same vide his order dated 26.08.2021. Aggrieved by the same, the petitioner approached this Court for grant of anticipatory bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this FIR. He submits that the petitioner was not named in the FIR, however, during investigation, deliberately her name has been roped in. He submits that even if the statement is taken to be as gospel truth then the allegations are against Dharambir and thus, no offence is made out against the present petitioner. He has submitted that at best the case against the petitioner could be a case under Section 312 IPC and not under Section 313 IPC. He has also submitted that from the disclosure statement of the main accused Dharambir, it is apparent that he reached the Krishna Hospital and

Physiotherapy Centre General and Gynaecology Centre, Narwana and got the abortion done of the complainant. He has further submitted that from the reading of the supplementary statement of the complainant, no case is made out against the petitioner. It is also alleged in the supplementary statement that petitioner was known to accused Dharambir and Anoop and she started her treatment and conducted her abortion. He has submitted that in the facts and circumstances of the case, the petitioner deserves to be granted the anticipatory bail.

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

As per allegations in the FIR, there are serious allegations against one Dharambir. As the investigation commenced, the role of co-accused started surfacing and the supplementary statement of the complainant was recorded wherein, the complicity of the petitioner came to the light. The anticipatory bail application qua co-accused Dharambir has already been declined by this Court. Thus, *prima facie* complicity of the petitioner is found from the supplementary statement. The matter is under investigation.

For the consideration of anticipatory bail, the statutory parameters as envisaged under Section 438(1) Cr.P.C. are as follows:-

“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.”*

For a fair trial, a thorough and fair investigation is the backbone. As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. 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 The State v. Captain Jagjit Singh, 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.

In the overall facts and circumstances of the case, petitioner does not qualify to be enlarged on anticipatory bail. 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.

28.01.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No