

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

CRM-M-39959-2022

Date of decision : 05.09.2022

Dharminder Kumar

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sandeep Kumar, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.209 dated 21.08.2021, under Sections 376, 506 of IPC and Section 67-A of Information Technology Act, registered at Police Station Haibowal, District Police Commissionerate Ludhiana.

As per the facts of the case, the FIR in question was lodged by the prosecutrix wherein specific allegations pertaining to the forcible and sexual intercourse with the prosecutrix by accused-Dharminder Kumar were made. It was alleged by the prosecutrix that the petitioner is the owner of the gym which she had joined. However, the petitioner exploited his position and made her objectionable videos in his mobile and started blackmailing her. He thereafter uploaded the videos on social media i.e. You Tube, Whatsapp, Instagram, Facebook. He started demanding Rs.5,00,000/- from the prosecutrix. Left with no other alternative, the prosecutrix decided to resort to the legal action against the accused and thus, recorded the FIR. On the registration of the same, the investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Ludhiana praying for grant of anticipatory bail. However, after hearing

counsel for the parties, learned Additional Sessions Judge, declined the same

vide her order dated 28.02.2022. Aggrieved by the same, petitioner is before this Court by way of filing the present petition praying for grant of anticipatory bail.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that the prosecutrix is a married woman and mother of two children. He submits that the petitioner and the prosecutrix were both known to each other and at the most, the relationship between both of them was consensual. The prosecutrix in order to blackmail the petitioner has levelled false and frivolous FIR. He has submitted that if *prima facie*, the allegations in the FIR are perused then the relationship between the petitioner and the prosecutrix can be said to be consensual and then offence under Section 376 IPC is not attracted. He further submits that the allegations pertaining to uploading all the objectionable videos of the prosecutrix on the social media are also false as there is no evidence to substantiate the same. He submits that the petitioner has no criminal antecedents and is a respectable person of the society and thus, he deserves to be granted bail.

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

Apparently, the allegations against the petitioner are pertaining to sexual abuse of the prosecutrix. Though the relationship between both of them have been contended to be consensual, however, the prosecutrix had made specific allegations regarding committing rape by the petitioner without her consent. It has also been alleged that the petitioner had made the objectionable videos and photos of the prosecutrix on the basis of which, he had exploited her for a considerable long time. He has also uploaded these videos on the social media as well. 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.*

In the facts and circumstances of the case when the allegations are of serious in nature, granting bail to the petitioner at this stage when the investigation is at threshold would prejudice 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.

05.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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