

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

CRM-M-39670-2022
Date of decision: 02.09.2022

Neetu Kumar and anotherPetitioners

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.G.S. Sandhu, Advocate, for the petitioners.
Mr. B.S. Virk, Deputy Advocate General, Haryana.
Mr. Akshay Jindal, Advocate, for the complainant.

RAJESH BHARDWAJ, J.

The petitioners have approached this Court praying for grant of anticipatory bail in a case FIR No.373, dated 6.4.2022, registered under Section 346 IPC (Sections 376(2)(n), 376(D), 323, 328, 506, 120-B IPC added lateron), at Police Station Barwala, District Hisar.

As per factual matrix of the case, the FIR in question was lodged by Shamsher son of Ramesar. It was alleged there in that on 4.4.2022 at about 8:00 am, his daughter i.e. the victim (name concealed) had gone to college at Barwala from home, but did not return back to home. Her date of birth is 2.9.2003. Despite best efforts, he failed to trace out his daughter. Request was made to search his daughter. On registration of the FIR, the investigation commenced. On return of the victim, her statement under Section 164 Cr.P.C. was recorded, wherein she deposed against the petitioner regarding their complicity during the period of her missing from home. The petitioners are also named by her in the statement recorded under Section 164 Cr.P.C.

Apprehending arrest, the petitioners approached the Court of learned Additional Sessions Judge, Hisar for grant of anticipatory bail, who after hearing both the sides declined the anticipatory bail of petitioner No.1 vide order dated 5.8.2022 and that of petitioner No.2 vide order dated 10.8.2022. Aggrieved by the same, the petitioners have approached this Court by way of filing the present petition for grant of anticipatory bail.

Learned counsel for the petitioners has contended that the petitioners have been falsely and frivolously implicated in this case. He has submitted that petitioner No.1 is brother-in-law (Jija) and petitioner No.2 is maternal uncle (Mausa) of Gaurav, who had relationship with the prosecutrix/victim. He has submitted that as the family of the prosecutrix was against the relationship of the prosecutrix and Gaurav, who performed marriage on 4.4.2022. He has submitted that both the prosecutrix and Gaurav are major and their relationship being consensual, offence as alleged is not attracted against the petitioners. He submits that the petitioners have been falsely implicated as an act of vendetta by the complainant. He has submitted that the co-accused, Babeeta, Satesh @ Santosh and Shivani have already been granted interim protection by this Court and thus, the petitioners deserve to be granted concession of anticipatory bail.

Heard.

As per record of the case, the prosecutrix went missing from home on 4.4.2022. On her recovery, she was produced before the Judicial Magistrate and her statement under Section 164 Cr.P.C. was recorded, wherein she deposed that on 4.4.2022, she was administered intoxicant substance in cold drink by Shivani and her husband Neetu i.e. the petitioner No.1. She became unconscious and on regaining consciousness, she found herself in the chamber

of an Advocate at Muzaffar Nagar (UP). The co-accused Gaurav, Vishesh and Kuldeep were present there. She deposed that Gaurav brought her to his house, where Gaurav, Neetu and Vishesh raped her. From the statement of the prosecutrix given under Section 164 Cr.P.C., it is apparent that there are specific allegations of committing rape by the petitioners with the prosecutrix. The contentions of the petitioners that the co-accused have been granted interim protection by this Court, is without any merit as the case of the petitioners cannot be said at par with that of the co-accused. There are specific allegations of committing rape by the petitioners with the prosecutrix. The investigation is at threshold. Fair and impartial investigation is backbone of the criminal trial. In the facts and circumstances of the case, the allegations need to be investigated thoroughly. Hon'ble the Supreme Court in State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187 has 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 ensconded with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disintering offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs.

State of Punjab, AIR 1980 SC 1632 has held as under:-

“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.

In the abovesaid case, the Hon’ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual. The Hon’ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioners do not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

02.09.2022
sharmila

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