

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

CRM-M-43658-2021

Date of decision : 14.01.2022

Jaswant Narwal

..... Petitioner

versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Amit Jhanji, Senior Advocate with
Mr. Himmat Singh, Advocate
for the petitioner.

Mr. B.S. Virk, D.A.G., 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.

This petition has been filed praying for grant of anticipatory bail to the petitioner in case FIR No.590 dated 28.09.2021, under Section 354-A IPC and Section 10 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sadar Bhiwani, Haryana.

As per the factual matrix of the case, the FIR was lodged by one Jitender son of Om Parkash wherein, the allegations in the FIR are that his daughter aged about 14 years, is studying in 9th Class in Government High School, Ghuskani. On 27th September, 2021, his daughter went to the school and after completion of the school, she came back and started crying. She told that Jaswant, Science Teacher of her school has done bad act with her by putting his hand in the pocket of her shirt and started doing vulgar act by keeping his hand on her breast. The

FIR was registered and the request was made to take the legal action against the accused.

The petitioner had approached the learned Additional District & Sessions Judge, Fast Track Special Court, Bhiwani, for grant of anticipatory bail, who after hearing learned counsel for the parties, declined the same vide her order dated 11.10.2021. Aggrieved by the same, the petitioner approached this Court for grant of anticipatory bail.

Learned Senior Counsel has vehemently argued that the petitioner has been falsely implicated in this case. He submits that the petitioner being a Teacher, had some suspicion and for the same, he searched the pocket of the victim, for which later on, he has been falsely alleged to have committed the offence under the IPC and POCSO Act.

Notice was issued to the State with the direction to file the status report which has been placed on record. Learned Senior Counsel has relied upon the judgment titled as Joy V.S. Vs. State of Kerala represented by Public Prosecutor, High Court of Kerala, Ernakulam (Bail Application No.8741 of 2018 decided on 05.03.2019) and has submitted that there was no intention on the part of the petitioner to outrage the modesty of the child or to commit any such offence. In view of the same, he contended that no offence as alleged is made out against the petitioner and he be granted the anticipatory bail.

On the other hand, learned State counsel has relied upon the status report filed from which he asserts that it is apparent that the victim is hardly 13 years of age. Her statement under Section 164 Cr.P.C. and that of the Sanskrit teacher Smt. Krishna Kumari recorded under Section 161 Cr.P.C. have also been placed on record.

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

The allegations and the counter-allegations are to be appreciated by the trial Court after conclusion of evidence. However, at this stage, this Court is seized of the matter pertaining to the grant of anticipatory bail. The *prima facie* case against the petitioner is not only under IPC but under the POCSO Act as well wherein there are statutory provisions regarding the presumption to certain offences and culpable mental state. The relevant sections are Sections 29 and 30 of the POCSO Act which reads as follows:-

29.Presumption as to certain offences:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

30.Presumption of culpable mental state:-(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and nor merely when its existence is established by a preponderance of probability.

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 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 on circumspection, I find that the case against the petitioner does not qualify for exercising its extraordinary jurisdiction in favour of him. This Court is not inclined to grant the anticipatory bail to the petitioner who is a

Teacher of the victim child.

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.

14.01.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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