

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

CRM-M-40210-2022

Date of decision : 09.09.2022

Krishan Kumar

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

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

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court for grant of anticipatory bail in case FIR No.287 dated 03.06.2022, under Sections 363, 366-A of IPC initially, Sections 376(2)(n), 343, 506 of IPC and Section 6 of POCSO Act added later on, registered at Police Station Jind Sadar, District Jind.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that the petitioner is not named in the FIR. He further submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. where also she has not named the petitioner and the name of the accused mentioned in statement under Section 164 Cr.P.C. was Pardeep.

Vide order dated 05.09.2022, this Court had directed the State to file status report which has been placed on record by way of affidavit of Ravi Khundia, Deputy Superintendent of Police, Jind-Detective, District Jind wherein, it has been submitted that as per the investigation so far, it has been found that the petitioner is known by the name of Pardeep in the village, however, in the record his name is Krishan. It is argued by learned State counsel on instructions of the Investigating Officer that the petitioner

was shown to the prosecutrix where she has recognized him during investigation. In her supplementary statement recorded on 04.07.2022, she has deposed about the complicity of the petitioner and co-accused Sandeep in committing wrong act with her.

After hearing counsel for the parties and perusing the record, this Court does not find it an appropriate case for granting anticipatory bail. The matter is under investigation. The allegations against the petitioner are pertaining to a heinous offence. The victim is minor and her statement cannot be discarded at the 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 always 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.

Looking into the facts and circumstances of the present case, it is apparent that the case needs a thorough and fair investigation which is backbone of every criminal trial. Granting pre-arrest bail to the

petitioner at this stage, when the investigation is at threshold, in all its probability would prejudice the ongoing investigation. Thus, keeping in view the law settled by the Hon'ble Supreme Court, this Court is of the opinion that the petitioner do not qualify for grant of anticipatory bail. Hence, the petition being devoid of any merits, is hereby dismissed.

09.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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