

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(101)

CRM-M-44103-2022
Date of Decision: 23.09.2022

Simratpreet Singh

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Rishu Mahajan, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C praying for granting of anticipatory bail to the petitioner in case FIR No.292 dated 5.9.2022 registered under sections 354, 354-A, 354-D, 427, 506, 34 IPC read with section 67-A of I.T Act at Police Station, Maqboolpura, Amritsar.

As per facts of the case, the present FIR was lodged by the complainant (name concealed), wherein it was alleged that prosecutrix was serving as a Constable in Punjab Police, District Amritsar. Opposite to her residence accused Simratpreet Singh i.e. the present petitioner, who was also employed in Punjab Police, was residing. He used to stalk the complainant and send her obscene messages on Whatsapp. In order to save her honor the complainant blocked his number, however, the accused did not mend his ways and started making her video calls as well. The vulgar messages were sent to the complainant. When the complainant and her family members complained about the same, accused misbehaved with them and beaten them. Resultantly, the complainant lodged the present FIR

to take legal action against the accused.

The investigation commenced and apprehending his arrest the petitioner approached the learned Fast Track Court, Amritsar praying for grant of anticipatory bail. However, after hearing the parties, the same was declined vide order dated 13.9.2022. Aggrieved by the same, petitioner has approached this Court for grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He submits that the petitioner is the member of a disciplined force and he cannot be expected for his involvement for the alleged offence. He submits that both the complainant and petitioner are neighbors and as there are differences among the families, on account of the same the complainant has lodged the present FIR on the basis of false and fabricated allegations. He submits that petitioner neither made any video call nor sent any vulgar message to the complainant, as alleged. He submits that petitioner has no criminal antecedents and as he is ready to join the investigation, he deserves to be granted the benefit of anticipatory bail.

Notice of motion.

On the asking of the court, Mr. Sandeep Kumar, D.A.G., Punjab accepts notice on behalf of respondent-State.

Learned State counsel has opposed the submissions made by counsel for petitioner. He submits that both petitioner and complainant are employed in Punjab Police. He submits that though the investigation is at threshold, however, complicity of the petitioner is writ large as is evident from the investigation conducted so far. He submits that the investigating

agencies are verifying the call records and Whatsapp messages sent by the petitioner to the complainant. He further submits that mobile phone of the petitioner is also required for further investigation.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

The allegations levelled by the prosecutrix against the petitioner are specific and serious in nature. The petitioner being the member of a disciplined force is not expected to indulge in such activities. 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.”

Looking into the facts and circumstances of the case, it is admitted position that the petitioner is member of the police department. He has been assigned the duty in the cyber cell of the department. An official who has been assigned the responsibility by the State of preventing the innocent victims fallen prey to the cyber offences, cannot be expected to be himself involved in the cyber offences.

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 does not qualify for grant of anticipatory bail. Petition, being devoid of any merits, is hereby dismissed.

23.09.2022

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(RAJESH BHARDWAJ)
JUDGE

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