

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

CRM-M-45521-2022

Date of decision : 29.09.2022

Anil

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Aman Pal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail in case bearing FIR No.527 dated 04.05.2022, under Sections 323, 34, 354, 376, 376(2)(n), 506 (Section 354-D of IPC added later on), registered at Police Station Sadar Hisar, District Hisar.

Adumbrated facts of the case are that the prosecutrix (name concealed) lodged the FIR on the basis of the allegations made therein. The sum and substance of the allegations made in the FIR is that she was married to Kapil son of Kuldeep. In December, 2020 at about 3:00 PM when she was alone at home, her brother-in-law (nandoi), Anil son of Dalbir Singh (petitioner) came there; finding her alone, Anil started molesting her. On her resistance, he forcibly pushed her on the bed and thereafter, he raped her against her consent. She was threatened to be defamed in case, she disclose anything regarding the same. The prosecutrix kept mum which encouraged accused Kuldeep and he repeated the offence by blackmailing her. On one day, she was seen by her father-in-law with Anil then he threatened her that he had made a

video of her and thereafter, father-in-law also started blackmailing her. When she complained about the same to her mother-in-law, prosecutrix was beaten and threatened to be killed in case she did not keep mum. Having no other alternative, the prosecutrix approached the police with a request to take the legal action against the culprits. On registration of the same, the investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Hisar praying for grant of anticipatory bail. After hearing counsel for both the sides, learned Fast Track Court declined the same vide its order dated 23.09.2022. Aggrieved by the same, the petitioner is before this Court praying for grant of bail.

Learned counsel for the petitioner has vehemently contended that the present case against the petitioner is nothing but an abuse of the process of the Court. He has submitted that the petitioner is in distant relation with the prosecutrix who has been made an scapegoat in the family dispute of the prosecutrix with her husband and in-laws. He has submitted that the petitioner has no role whatsoever in the alleged offence. Learned counsel for the petitioner has submitted that from the bare reading of the allegations, it is apparent that there is an unexplained delay of 17 months in lodging the FIR. He submits that the alleged incident pertains to December, 2020 but the FIR was lodged on 04.05.2022. He further submits that the prosecutrix levelled the allegations in the FIR regarding beating her but the same were not substantiated during investigation and hence, husband and mother-in-law were declared innocent by the investigating agency. He submits that the marriage of the brother-in-law of the petitioner was solemnized with the prosecutrix on 12.03.2018. Thereafter, on account of the matrimonial dispute, the husband of the prosecutrix filed the divorce

petition on 23.12.2021. Notice of the same was received by the prosecutrix in March, 2022. Hence, as an act of vendetta, she lodged the present FIR on 04.05.2022. He submits that from the facts and circumstances of the case, it is apparent that the petitioner has been falsely roped in this case. He has further submitted in the facts and circumstances of the case, no cognizable offence is made out against the petitioner and hence, he deserves to be granted bail.

Notice of motion.

On asking of the Court, Mr. B.S. Virk, DAG, Haryana accepts notice on behalf of the respondent-State. Mr. Mukesh Rao, Advocate accepts notice on behalf of the complainant.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner. He has submitted that there are specific allegations made by the prosecutrix against the petitioner regarding molesting and committing rape upon her. He has submitted that it is not only the petitioner but father-in-law of the prosecutrix is also involved in the offence. He submits that the father-in-law was arrested by the police however, he managed to escape from the custody of the police and he is still at large. He submits that in the facts and circumstances, no case is made out to grant anticipatory bail to the petitioner.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the prosecutrix has made specific allegations regarding rape by the petitioner in her initial statement, on the basis of which, the FIR was registered. He further submits that in her statement recorded under Section 164 Cr.P.C., the allegations against the petitioner are in emphatic terms. He has further submitted that the father-in-law is also an accused and he has escaped from the custody of

the police. He submits that granting anticipatory bail to the petitioner would seriously prejudice the ongoing investigation.

Heard.

Evidently, the prosecutrix and the petitioner are the relatives. Though both of them are of the age of majority, however, the prosecutrix has levelled the specific allegations regarding the serious offence like rape against the petitioner. As per the allegations, the petitioner kept blackmailing the prosecutrix for a considerable long time. Besides this, during investigation, father-in-law of the prosecutrix namely, Kuldeep was arrested by the police. However, when he was being taken for his medical examination from General Hospital Hisar, he managed to escape from the custody of the police.

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.

Applying the law settled to the facts and circumstances of the present case, it is evident that the allegations against the petitioner are of committing a heinous offence against the complainant. Whether the alleged matrimonial dispute is sufficient enough to discredit the case of the prosecution is a subject matter after a thorough trial to be conducted after free and fair investigation is done by the police. The investigation in the case is at threshold and granting anticipatory bail to the petitioner would prejudice the ongoing investigation. The provisions of anticipatory bail are extraordinary in nature and this power can be invoked by this Court if the facts and circumstances of the case sufficiently fulfills the parameters of the consideration as per the law settled. However, this Court in the overall facts and circumstances is of the opinion that the petitioner do not qualify the parameters required, as per the law settled. Granting pre-arrest bail to the petitioner would prejudice the free and fair investigation and hence, would be against the larger interest of the society. Resultantly, 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

29.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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