

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

**CRM-M-48465-2022**

**Date of decision : 21.10.2022**

**Rohit Tewatia**

**.....Petitioner**

**versus**

**State of Haryana**

**..... Respondent**

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

**\*\*\*\***

Present :- Mr. Rakesh Nehra, Senior Advocate with  
Ms. Himani Anand, Advocate and  
Mr. Sauhard Singh, Advocate  
for the petitioner.

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**RAJESH BHARDWAJ, J.**

This is the second petition filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.85 dated 27.06.2022, under Sections 376(2)(n), 313, 120-B, 506 of IPC and Section 6 of POCSO Act at Women Police Station, Ballabhgarh, District Faridabad, Haryana.

As per the facts of the case, the petitioner approached this Court on the earlier occasion praying for grant of anticipatory bail by way of filing CRM-M-31202-2022 which was dismissed as withdrawn with liberty to the petitioner to avail the alternative remedy as in accordance with law vide order dated 28.09.2022. On the basis of compromise arrived at between the parties, the parties were referred to the Mediation Centre. However, as the mediation between the parties failed, earlier petition filed was withdrawn by the petitioner. Now the petitioner has approached this Court praying for grant of anticipatory bail on the basis of merits of the case.

The present FIR was lodged on the statement of the victim (name concealed) wherein she alleged that she used to go to the tuition classes where she met Rohit i.e. the petitioner. One day, when she was

returning from her tuition classes then Rohit stopped her and insisted her to accompany him to his house. She went with him to his house where he locked the door and he forcibly raped her. Despite her resistance, he did not deter and thus, ravished her. On returning of his mother, she was assured that Rohit would marry her when she attained the age of 18 years. She was threatened with dire consequences. Due to the rape committed by the petitioner, she became pregnant in November, 2021 and then the petitioner gave her medicine for termination. It was requested to register the FIR and to take legal action against the culprits. On the basis of the statement of the prosecutrix-victim, the FIR was registered and investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Faridabad praying for grant of anticipatory bail. After hearing counsel for the parties, learned Fast Track Special Court declined the same vide order dated 13<sup>th</sup> July, 2022. Aggrieved by the same, the petitioner has approached this Court praying for grant of anticipatory bail.

Learned Senior counsel has submitted that though the petitioner has approached this Court on the earlier occasion also, however, the same was withdrawn and the petition was not decided on merits. Thus, the present petition is maintainable. He submits that from the reading of the allegations in the FIR, it is apparent that the occurrence relates back to year 2017 whereas, the FIR has been lodged after an unexplained delay of about 05 years. He submits that the relationship between the petitioner and the prosecutrix was consensual. He has further submitted that both the sides on the earlier occasion have compromised the matter as well. However, later on the prosecutrix changed her mind and hence, settlement arrived was withdrawn by the victim. He further submits that from the perusal of the

whatsapp chats between both the petitioner and the prosecutrix, their consensual relationship is apparent. He submits that the petitioner has no criminal antecedents and in view of the judgment tilted as *Shri Erickson Lyngdoh Vs. State of Meghalaya Law Finder Document Id# 1737484*, the petitioner deserves to be granted anticipatory bail.

Heard.

Admittedly, this is the second petition filed by the petitioner. However, after arguing for some time, the earlier petition was withdrawn with liberty to avail alternative remedies. As submitted by learned Senior counsel, the merits of the case were appreciated on earlier occasion and hence, on appreciation of the merits of the case, the petitioner has a good case for anticipatory bail. However, this Court is not in agreement with the argument raised by learned Senior counsel. The prosecutrix was hardly 16 years of age at the time of the occurrence. It is alleged that the petitioner developed relationship with the prosecutrix and thereafter, forcibly committed rape with her. As a result, the prosecutrix became pregnant as well. The statement of the prosecutrix-victim was recorded by learned Judicial Magistrate Ist Class under Section 164 Cr.P.C. The victim duly supported her allegations made in the FIR. The contention of the learned Senior counsel pertaining to compromise arrived at between the parties is inconsequential. The petitioner is facing the allegations under the POCSO Act as the victim was minor. Even if there is any compromise arrived at between the parties, the same would have no legal sanctity. The investigation is at threshold and the Court is to see the *prima facie* case against the petitioner-accused. In view of the allegations made by the victim, the *prima facie* allegations against the petitioner are serious for committing a heinous offence. The case needs to be thoroughly investigated.

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.*

In the overall facts and circumstances of the case, this Court is of the opinion that there is no merit in the petition and the same is dismissed.

21.10.2022  
m. sharma

( RAJESH BHARDWAJ )  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No