

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

**CRM-M-52068-2022**

Date of Decision: 14.11.2022

Hussan Chand

..... Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Dr. Anmol Rattan Sidhu, Sr. Advocatae with  
Mr. Shiv Kumar Sharma, Advocate, for the petitioner.

**Rajesh Bhardwaj, J.**

Prayer in the present petition is for the grant of anticipatory bail to the petitioner in a case FIR No.127 dated 16.10.2022, registered under Sections 376, 385 IPC and Sections 67 & 67-A of Information Technology (Amendment) Act, 2008, at Police Station Anandpur Sahib, District Rupnagar.

As per factual matrix of the case, the present FIR was lodged by the victim (name concealed), wherein, it was alleged that she has studied till MA from Khalsa College, Shri Anandpur Sahib. Hussan Chand @ Shanty i.e. the petitioner used to talk to her on phone. He came to meet her outside the college. He used to say to her that he wanted to marry her. Thereafter, Hussan Chand took her to Grand Hotel at Shri Anandpur Sahib in the year 2019 and made forcible physical relationship with her. He clicked obscene photographs of the victim without her consent. In August, 2022, Hussan Chand @ Shanty again forced her to establish physical relationship with him. Thereafter, she came to know that Hussan Chand @ Shanty was already married. After about 6-7 months, Hussan Chand @

Shanty called her on phone and demanded Rs.2,50,000/- from her and threatened her in case she disclose these things to anyone, he would viral her photographs. Thereafter, her matrimonial alliance was settled with Prince son of Daljit Singh. Hussan Chand @ Shanty sent her obscene photographs to her fiancé Prince and as a result thereof, her fiancé Prince called the victim on 7.10.2022 and refused to marry her. Request was made to lodge the FIR and to take legal action against the accused. On the registration of the FIR, the investigation commenced. The accused-petitioner apprehending arrest approached the Court of learned Sessions Judge, Rupnagar for grant of anticipatory bail, who after hearing both the sides declined the anticipatory bail of the petitioner vide order dated 26.10.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of anticipatory bail.

Learned senior counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that from the reading of the allegations in the FIR, it is apparent that the petitioner and the prosecutrix were both in consensual relationship. He submits that the Investigating Agency has failed to recover any obscene photograph or video as alleged by the victim to substantiate the allegations made in the FIR. He has submitted that the petitioner and the prosecutrix both are of the age of the majority and were in consensual relationship. He has submitted that when both are of the age of the majority, offence under Section 376 IPC would not be attracted. He further submits that the petitioner has no criminal antecedents and hence, in the overall facts and circumstances, his life and liberty be protected by granting him anticipatory bail.

Heard.

After hearing learned senior counsel for the petitioner and perusing the record, it is apparent that though the petitioner and the prosecutrix are of the age of the majority, however, allegations made by the prosecutrix are to the extent that the petitioner had established physical relationship with prosecutrix by concealing the fact of his marital status. Besides this he has allegedly made her photographs and videos and on the threat of the same, he had been blackmailing the prosecutrix. Once, the prosecutrix refused to oblige him, the petitioner sent the photographs and videos to her fiancé and as a result alliance between the prosecutrix and her fiancé came to an end. Needless to say that the allegations made by the prosecutrix are grave and serious against the petitioner, which need to be investigated thoroughly.

Hon'ble the Supreme Court in State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187 has 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 ensconded with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disintering offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632 has held as under:-

“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.

In the abovesaid case, the Hon’ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual. The Hon’ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner do not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

**(RAJESH BHARDWAJ)**  
**JUDGE**

**14.11.2022**  
sharmila

Whether Speaking/Reasoned : Yes/No  
Whether Reportable : Yes/No