

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

CRM-M-53157-2022

Date of decision : 17.11.2022

Lakhwinder Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Dr. Rau P.S. Girwar, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

This petition has been filed praying for grant of anticipatory bail to the petitioner in case FIR No.171 dated 23.10.2022, under Sections 354, 354-A, 354-D of IPC, registered at P.S. Sadar Bathinda, Punjab.

As per the facts of the case, the prosecutrix (name concealed) made a statement before the police. It was alleged that she was working as Incharge Micro Biologist in M/s Mitsumi AgriScience Pvt. Ltd. For the past few days, a boy who comes in Swift Car No.PB-03BJ-0970 was stalking her. He daily followed her when she go to the factory in the morning at 09:00 AM and in the evening at around 05:00 PM after office hours. The same had been recorded in the CCTV cameras of their factory which she could produce. He repeatedly stalk her and one day, he told his name as Lakhwinder Singh and then uttered abusive language affecting her dignity. In her absence, he left his contact number on a piece of paper in her scooter. On 22.10.2022 at about 09:00 AM, he stopped his car in front of her scooter and came out of the car. He molested her and tried to force her to sit in his car. On her raising alarm, he escaped from there. The request was made to take legal action against the culprits. On the basis of her statement, FIR was registered and investigation commenced.

Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Bathinda praying for grant of anticipatory bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide his order dated 02.11.2022. Aggrieved by the same, the petitioner is before this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case by the prosecutrix. He has submitted that the allegations made in the FIR are totally false and fabricated rather on 22.10.2022, the petitioner dropped his wife to Desh Raj Government Senior Secondary School and thereafter, he came back to his residence. The CCTV footage from the entrance of the colony proves the presence of the petitioner in colony at the relevant time. He also submits that the tower location of the mobile of his wife would also shows that the petitioner was not present at the place of occurrence where the prosecutrix has alleged him to be present. He further submits that the ingredients of Section 354 IPC and that of Section 354-D of IPC are not made out from the allegations made in the FIR. He has submitted that once the petitioner was not even present at the alleged place of occurrence at the relevant time then the allegations made against him are totally a cock and bull story and hence, his false implication is writ large. He has relied upon the judgments titled as **Gagandeep Palta Vs. The State of Punjab, 2020(4) Law Herald 3366; Chumnu Mahto and others Vs. State of Jharkhand, 2016(2) AIR Jhar.R.468; Lav Mishra Vs. State of Chhattisgarh through Collector Raipur, District Raipur, Chhattishgarh and another, 2016 CriLJ 2284; Lekhraj Vs.**

State of Rajasthan, 2015(34) RCR (Criminal) 254; Santosh Kumari and another Vs. State of Haryana, 2014(14) RCR(Criminal) 673. He has submitted that the petitioner has no criminal antecedents and hence, in the overall facts and circumstances of the case, he deserves to be granted anticipatory bail.

Heard.

After hearing counsel for the petitioner and perusing the record, it is evident that the prosecutrix was working as Incharge Micro Biologist in M/s Mitsumi AgriScience Pvt. Ltd. at Bathinda. She specifically alleged that the petitioner stalked her in the morning when she goes to the office and thereafter, in the evening after office hours. He waylaid and molested her in the public places. She also made a statement that she was in a position to prove the CCTV footage installed in the factory premises.

After registration of the FIR, her statement was recorded under Section 164 Cr.P.C. and she deposed in the lines of the allegations made in the FIR. It is apparent from the record that the police has taken into possession CCTV footage as well as the photographs.

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:-

(v) the nature and gravity of the accusation;

(vi) *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;*
(vii) *the possibility of the applicant to flee from justice; and*
(viii) *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 ratio of law settled by the Hon'ble Supreme Court to the facts and circumstances of the present case, it is apparent that the petitioner is facing serious allegations levelled by the prosecutrix. Investigation is at the nascent stage. There is nothing on record to show at this stage that the prosecutrix has any motive to falsely implicate the petitioner. The authorities relied upon by the learned counsel for the petitioner would be of no help to the petitioner as they are distinguishable on the basis of facts. The provisions of anticipatory bail are extraordinary in nature and this power can be invoked by the Court if the facts and circumstances of the case sufficiently fulfills the parameters required for 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 anticipatory bail to the petitioner would seriously prejudice the ongoing investigation. 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.

17.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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