

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

CRM-M-53068-2022

Date of decision : 17.11.2022

Ish Kumar

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vineet Chaudhary, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This petition has been filed praying for grant of anticipatory bail to the petitioner in case FIR No.247 dated 03.10.2022, under Sections 323/376(2)(n) of IPC, registered at Police Station Civil Lines, Gurugram.

Adumbrated facts of the case are that the prosecutrix (name concealed) made a statement before the police alleging that she met a boy namely, Ish on 28.07.2022 in a party. He told her that he wanted to marry her. On 01.08.2022, he came to meet her in a rented accommodation of her friend at Saket, Delhi. They made physical relation on that date. After that Ish made physical relations with her for 2-3 times at Heritage Hotel, Civil Lines Road. On 15.09.2022, he forcibly made physical relations with her in Heritage Hotel and gave her beatings and after giving beatings to her, he ran away. Thereafter, she came to know about Ish having relations with some other girl. On 03.10.2022, she caught Ish in Heritage Hotel but the girl with whom he had gone there, had already left. She called at No.112 and the police reached there. The request was made to take strict legal action against Ish. On the basis of the statement made, the FIR was registered and the investigation commenced. Apprehending his arrest, the

petitioner approached the Court of learned Additional Sessions Judge (Fast Track Court), Gurugram praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide his order dated 31.10.2022. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the petitioner and the prosecutrix both are of the age of majority. He has further submitted that on bare perusal of the allegations made in the FIR, it is apparent that the petitioner and the prosecutrix who are of the age of majority are in a consensual relationship with each other. He submits that once the petitioner and the prosecutrix are in a consensual relationship, offence under Section 376 IPC would not be attracted. He has submitted that the prosecutrix has herself made a statement that the petitioner promised her to marry and hence, she established physical relationship with the petitioner voluntarily. He submits that the allegations regarding giving promise to marry are totally false and frivolous. However, relationship between both the petitioner and the prosecutrix being consensual would not attract the offence under Section 376 IPC against the petitioner. He submits that the petitioner is a young boy and his future is at the stake. He submits that the petitioner has no criminal antecedents and thus, in the overall facts and circumstances of the case, he deserves to be granted pre-arrest bail.

Heard.

After hearing counsel for the petitioner and perusing the record, it is evident that the petitioner and the prosecutrix both are of the age of majority and they had a consensual relationship. However, the allegations made by the prosecutrix are to the extent that after having entered into friendship, the petitioner made a promise to marry her and thus, obtained her consent for the physical relationship. However, soon thereafter, he was caught by the prosecutrix when she came to know that the petitioner has come to the Heritage Hotel with some another girl. The police also reached there, however, the girl had already left. Hon'ble the Supreme Court in the judgment titled as **Pramod Suryabhan Pawar Vs. The State of Maharashtra and others, (2019) 9 SCC 608** has laid down that if the consent of the prosecutrix is obtained by misconception of fact then offence under Section 376 IPC is made out. However, from the facts and circumstances of the case, allegations made by the prosecutrix are to the extent that the petitioner had obtained her consent for the physical relationship by misconception of the fact and hence, Section 376 IPC is attracted against the petitioner.

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.

Hon'ble the Supreme Court in the judgment titled as **X Vs. Arun Kumar C.K. And another, 2022 LiveLaw (SC) 870** has held that the first and foremost thing that the Court hearing an anticipatory bail application should consider, is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

Weighing the facts and circumstances of the present case on the anvil of the law settled, this Court finds that the petitioner does not qualify for exercising its extraordinary jurisdiction by this Court under Section 438 Cr.P.C. 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