

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

CRM-M-54413-2022
Date of decision: 23.11.2022

Prince Singh Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Surjit Singh Swaich, Advocate,
Mr. Gurinder Singh, Advocate and
Mr. Pranshu Kamboj, Advocate for the petitioner.

RAJESH BHARDWAJ, J.

The petitioner has approached this Court praying for grant of anticipatory bail in a case FIR No.177, dated 14.7.2022, registered under Sections 363, 366, 376(2)(n), 120-B IPC and Section 4 of POCSO Act, 2012 (Sections 376(2)(n), 120-B and Section 4 of POCSO Act, 2012 added lateron), at Police Station Mandi Gobindgarh, District Fatehgarh Sahib.

Succinctly, the facts of the case are that the present FIR has been lodged by the father of the victim, wherein, it was alleged that his daughter i.e. the victim (name concealed) was born on 12.11.2007 and was a student of 10th class. On 13.07.2022 at 7:30 a.m., she went to School and at 12:15 pm, he got a phone call from the School class teacher about his daughter not having attended the school. However, his daughter already left for school from home in the morning. They started searching his daughter but failed to search her. It was found that she had taken some jewelry from home. They suspected that his daughter has been enticed away by Shakti Singh on the pretext of marriage.

The FIR was registered to take legal action against the culprit. On the

registration of FIR, the investigation commenced. On her recovery, the prosecutrix was produced before the learned Magistrate and her statement under Section 164 Cr.P.C. was recorded on 05.08.2021. In the statement, she deposed regarding complicity of Prince Singh, i.e. the petitioner and thus, he was also nominated as accused in this case. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Fatehgarh Sahib for grant of anticipatory bail, who after hearing both the sides declined the same vide order dated 01.11.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of anticipatory bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely and frivolously implicated in this case. He has submitted that the petitioner has nothing to do with the elopement of the prosecutrix, however, he being the brother of co-accused Shakti Singh has been implicated with an ulterior motive to harass and humiliate him. He submits that the victim filed CRWP-7402-2022 before this Court against her parents and other relatives seeking protection of her life and liberty, however, the same was dismissed as withdrawn on 01.09.2022. He submits that the prosecutrix also filed a complaint under Section 156(3) Cr.P.C. against her parents and relatives. He has submitted that the petitioner is not required for any further custodial interrogation and thus, he deserves to be anticipatory bail.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the prosecutrix was about 15 years of age and a student of 10th class at the time of occurrence. On 13.07.2022, she went missing from home and on her recovery, she was produced before the learned

Judicial Magistrate for recording statement under Section 164 Cr.P.C. As observed by learned Addl. Sessions Judge, while dealing with anticipatory bail filed by the petitioner, the victim had deposed that she was kidnapped by Shakti Singh in connivance with Prince i.e. the petitioner and Vicky i.e. friend of Shakti Singh. The main accused Shakti Singh is yet to be arrested. The case deserves to be thoroughly investigated.

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 of 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 the accused 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, it is apparent that grant of anticipatory bail to the petitioner at this stage would seriously jeopardize the ongoing investigation, where heinous offence committed against the minor. Resultantly, the petition being devoid of any merit is hereby dismissed.

24.11.2021
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE
: Yes/No
: Yes/No