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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2047-2022

Date of decision : 27.03.2023

MOHIT SHARMA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

Mr. S.S. Hira, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.232 dated 22.12.2021 (Annexure P-1) registered under Section 306 IPC, 1860 at Police Station Mukerian, Tehsil Mukerian, District Hoshiarpur.

2. The brief facts of the case are that one Ravi Kumar son of Prema Rai gave an application to the Senior Superintendent of Police, Hoshiarpur against the petitioner-Mohit Sharma with the allegations that his (complainant's) family consisted of his wife Pritma Rai and two minor sons namely, Rahul Rai aged 17 years and Krishna Rai aged 10 years. His elder son who was a student of Class X had committed suicide on the night intervening 12/13.07.2021 by hanging. His suicide note dated 12.07.2021 had been recovered in which the name of the

petitioner-Mohit Sharma had been repeatedly mentioned. Information was supplied to the local police on 13.07.2021 and a post-mortem examination had taken place. However, despite the police having been informed about the suicide note, no action was taken. Thereafter, the messages on the mobile phone of the deceased were checked and it was found that the petitioner was having illicit relations with his son (deceased) and was sexually exploiting him (deceased). On account of this harassment and threat at the instance of the petitioner, his (complainant's) son remain depressed. Another boy had also called up his (complainant's) son and had used bad words and had also threatened him (deceased). On being asked as to from where he (other boy) had received his (deceased's) phone number, the boy had named the petitioner. Due to this reason, his (complainant's) son was under depression on account of the harassment and physical exploitation at the hands of the petitioner. Despite making repeated applications, no action had been taken by the Investigation Agency.

As multiple applications had been given by the petitioner, an inquiry was conducted. It was revealed that the deceased was a friend of Mohit Sharma (petitioner) who was pressurizing the deceased to establish unnatural relations with him. Due to the said harassment, the deceased had committed suicide on the night intervening night 12/13.07.2021 by hanging. Thereafter, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that the allegations levelled against him are false, frivolous and vague. No *prima facie* case under Section 306 IPC is made out. The case is based on hearsay evidence and there is no reference to an instigation, abetment or harassment on the part of the petitioner immediately before the date of the occurrence. The suicide note is silent regarding the role of the petitioner. In fact, the WhatsApp chats would suggest a friendly relationship between the petitioner on the one hand and the deceased on the other. However, taking the allegations to be true, no offence under Section 8 of the POCSO Act was made out and the offence, if at all would be under Section 12 of the POCSO Act. An offence under Section 12 of the POCSO Act was bailable. He therefore, contends that since the petitioner had joined investigation and had cooperated with the same, no case for custodial interrogation was made out and his interim bail be confirmed.

4. On the other hand, the learned State counsel has firstly filed a reply dated 23.02.2023 and thereafter on 14.03.2023. While referring to the WhatsApp chats attached with the reply dated 14.03.2023, he contends that the minor deceased had illicit sexual relations with the petitioner but quite apparently, there appears to be an element of force which has led to the establishing of the relationship. Ultimately, the deceased could not bear the pressure and therefore has committed suicide. Even otherwise, the deceased was less than 18 years old and the question of consent would not arise. Quite clearly, therefore, an offence

under Section 8 of the POCSO Act was made out and therefore, the nature of the allegations did not entitle the petitioner to the grant of bail.

5. The learned counsel for the complainant while referring to some of the chats contends that there is clearly an element of pressure being applied by the petitioner upon the deceased to maintain relations. The same is borne out from the language used. Various missed calls were given when the deceased was not answering the calls of the petitioner which would show that the deceased felt pressure and therefore was not responding to the petitioner's call. With respect to the suicide note not naming the petitioner as an accused, it is his contention that the deceased might not have wanted to embarrass himself or his parents. Therefore, he has only stated in the suicide note that information be given to the petitioner. However, the attending facts and circumstances do not leave any manner of doubt that on account of the pressure exerted by the petitioner the deceased committed suicide. Even otherwise, the deceased was a juvenile and the question of any consent would not arise. The provisions of the POCSO Act have also been invoked in the instant case which did not entitle the petitioner to the grant of bail.

6. I have heard the learned counsel for the parties at considerable length and examined the record.

7. The allegations levelled against the petitioner in the FIR and further substantiated by the messages exchanged between the petitioner and deceased certainly do not entitle the petitioner to the grant

of bail. In fact, while some messages exchanged may amount to banter, the bulk of the messages are threatening and abusive in nature and would amount to exertion of pressure specially when the boy in question happens to be a minor. Since the deceased was a juvenile, therefore, the provisions of the POCSO Act have also been invoked in the present case.

8. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) R.C.R. (Criminal) 977*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court

wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. 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 custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

9. In view of the aforementioned discussion as also the judgment in **Sumitha Pradeep** (supra), the petitioner certainly, does not deserve the concession of anticipatory bail. Therefore, I find no merit in the present petition and the same is hereby dismissed.

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10. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)

JUDGE

27.03.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No