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

CRM-M-21281-2023

Date of decision : 28.04.2023

Sunil Kumar Chopra**.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Yashveer Kharb, Advocate
for the petitioner.

*********RAJESH BHARDWAJ, J.**

This is the second petition filed by the petitioner under Section 438 Cr.P.C. for grant of concession of anticipatory bail in FIR No.547 of 2021 dated 30.12.2021, under Sections 313, 328, 342, 376(2)(f), 379-A, 498-A, 506/34 of IPC, registered at Police Station Civil Lines Sirsa, Haryana.

On the earlier occasion, petitioner approached this Court by way of filing petition i.e. CRM-M-28007-2022 which was dismissed as withdrawn vide order dated 04.07.2022.

As per the case of prosecution, FIR was registered on the statement of victim (name concealed) wherein she alleged that she was married to Kapil Chopra son of Nand Lal Chopra on 12.02.2021. Her mother and brother had spent about Rs.20-22 lacs on her marriage by giving sufficient dowry. She further alleged that soon after the marriage, her in-laws started harassing her for the demand of dowry. Number of times, she told her

parents about the harassment and cruelty being caused by Kapil Chopra, brother of Kapil Chopra namely, Sunil Chopra (petitioner) and Jyoti wife of Sunil Chopra. She alleged that on the very first night of her marriage, Kapil Chopra demanded car from her. She alleged that her in-laws concealed the fact that her husband was physically unfit and not able to give birth to a baby. She alleged that one day, her husband and Sunil Chopra (jeth) came to her house and after taking meal, her husband offered her cold drink and after taking the same, she became unconscious and when she regained consciousness, she found herself raped by Sunil Chopra. When she told the incident to her husband, he made her understand not to talk about the said incident to anyone on account of reputation of the family. She alleged that she even got pregnant and her jeth and jethani aborted her foetus forcefully by putting pills in her mouth. They confined her in a room for number of days and also snatched her mobile phone, key of almirah where her gold, silver ornaments and cash were lying. Due to confinement in a room for several days and effect of tablets, her condition started deteriorating and due to fear, her in-laws left her in her parental home on 01.06.2021. She told about the incident to her mother. Request was made to take legal action against the culprit.

Petitioner who is brother-in-law (jeth) of the complainant/victim approached learned Additional Sessions Judge, Fast Track Special Court, Sirsa praying for grant of anticipatory bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Fast Track Special Court declined the same vide order dated 07.06.2022. Aggrieved by the same, petitioner had earlier approached this Court by way of filing CRM-M-28007-2022 which was dismissed as withdrawn vide order dated 04.07.2022. Now the petitioner has approached again this Court

praying for grant of anticipatory bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the petitioner was not even residing with the complainant/victim and he had no interference in her matrimonial life. He has submitted that wife of the petitioner herself was pregnant in those days and was expecting her child and the petitioner was roaming in various hospitals to get her admitted but due to pandemic, her wife could not be admitted in hospital as there was shortage of beds. He has further submitted that the alleged incident of rape took place on 26.04.2021 but the FIR was lodged on 30.12.2021 i.e. after a lapse of more than 08 months. He has further stated that no particular time, date and month of termination of pregnancy has been given by the complainant which itself shows that the allegations levelled against the petitioner are false and frivolous. He further submits that nothing is to be recovered from the petitioner and as such, his custodial interrogation is not required. He submits that the investigation is already complete and thus, the petitioner be granted anticipatory bail.

I have heard counsel for the petitioner and perused the record.

After hearing counsel for the petitioner and perusing the record, it is apparent that petitioner had approached this Court on the earlier occasion by way of filing the petition bearing CRM-M-28007-2022 which was withdrawn. As per the law, second and successive anticipatory bail petitions are not even maintainable. Even otherwise, as per the case of prosecution, petitioner has committed rape with the complainant/victim and made her pregnant and thereafter got her aborted. There are specific allegations made against the petitioner by the complainant/victim regarding the mental and physical harassment caused to her by the petitioner. There are

serious allegations of rape against the petitioner and to elicit truth, his custodial interrogation is necessary. In the facts and circumstances of the case, this Court finds that neither the petitioner has a case on the maintainability of the second petition nor he has case on merits.

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 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 **G.R. Ananda Babu Vs. State of Tamil Nadu, 2021(1) RCR (Criminal) 843** has held that successive anticipatory bail applications ought not be entertained on specious ground of 'Changed Circumstances'.

In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed on both counts i.e. on maintainability being second application as well as on merits. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

28.04.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No