

**102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-24136-2023****Date of decision : 12.05.2023****Pappu Garg @ Ramesh Kumar****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Jasvir Singh Dhaliwal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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

Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.222 dated 30.09.2021, under Sections 224, 225 of IPC, registered at Police Station City Rajpura, District Patiala, Punjab.

As per the facts of case, the FIR was lodged on the statement of ASI Ram Gopal, Police Station Sadar Shimla (Himachal Pradesh). It was alleged that he was the Investigating Officer in FIR No.141/2021 under Sections 363, 376-D, 216 of IPC and Sections 4 & 21 of POCSO Act, registered at Police Station Sadar Shimla (Himachal Pradesh). On 28.09.2021, he along with his police party went to Ratia (Haryana) regarding the investigation of the above-mentioned case. Thereafter, on 29.09.2021 when he was going back from Rajpura to Police Station Sadar Shimla by taking with him the accused Prince Garg, Gobind Saini, Sukhjinder Singh Smart, Parveen Baghmare and Hunny Kumar then at about 10:15 PM they reached near Kaka Rajpura and when they were

taking all accused person then father of Prince Garg namely Harminder Garg and Pappu Garg along with three unknown persons came in Innova car and forcibly got released the accused Prince Garg and Sukhjinder Singh Smart from their custody by hatching the conspiracy and they all escaped from there. He along with his police party tried to apprehend them but failed in apprehending them. Thus, the FIR was lodged for further legal action. Petitioner apprehending his arrest, approached the Court of learned Additional Sessions Judge, Patiala 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 05.05.2023. Aggrieved by the same, petitioner is before this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He submits that the allegations made in the FIR are totally false and frivolous and no occurrence as alleged has taken place. He has submitted that as per the allegations made in the FIR, the police party visited Ratia for investigation of FIR No.141/2021 under Sections 363, 376-D, 216 of IPC and Sections 4 & 21 of POCSO Act, registered at Police Station Sadar Shimla (Himachal Pradesh) whereas the cancellation report had been filed by the police in the above said FIR and the same has been accepted by learned Additional Sessions Judge, Fast Track Special Court (POCSO), Shimla, H.P. vide order dated 07.01.2022. He submits that thus, the main case regarding which the investigation was allegedly being conducted had already been cancelled. He further submits that in the present FIR there is delay of one day in lodging the same. He submits that in view of the facts and circumstances, no case for the custodial interrogation of the petitioner

is made out and thus, he deserves to be granted anticipatory bail.

Learned State counsel has stated that when the police party was taking accused Prince Garg, Gobind Saini, Sukhjinder Singh Smart, Parveen Baghmare and Hunny Kumar to Police Station Sadar Shimla then the petitioner along with other accused came in Innova car and forcibly got released accused Prince Garg and Sukhjinder Singh Smart from the police custody by hatching a conspiracy. The petitioner along with other co-accused has committed serious offence and as such, he is not entitled for the pre-arrest bail. He further states that custodial interrogation of the petitioner is very much necessary to reveal the truth.

Heard. This Court has heard counsel for the parties and perused the record. It is apparent that the petitioner is specially named in the FIR which has been lodged by the complainant ASI Ram Gopal. As per the allegations, petitioner along with the co-accused forcibly got released the accused arrested by the police party. The submissions made by counsel for the petitioner that the cancellation report had already been accepted by the Court in FIR No.141/2021 under Sections 363, 376-D, 216 of IPC and Sections 4 & 21 of POCSO Act, registered at Police Station Sadar Shimla (Himachal Pradesh) would be of no benefit to the petitioner consequence as the same was accepted by the learned Additional Sessions Judge, Fast Track Special Court (POCSO), Shimla, H.P. on 07.01.2022. Further, the present occurrence had taken place on 28.09.2021 when the investigation in the said FIR was going on. Even otherwise, the conduct of the petitioner do not entitle him for the grant of extraordinary relief by this Court as he has allegedly committed an offence interfering with the public duty being performed by a public servant.

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.

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour. Resultantly, the petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

12.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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