

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

CRM-M-24943-2023

Date of decision : 24.05.2023

Resham Singh**....Petitioner****versus****State of Punjab****....Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Ms. Jyoti, Advocate with
Mr. Jatin Gahlot and Ms. Ishita, Advocates
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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

Petitioner has approached this Court by way of filing the present petition praying for grant of anticipatory bail in case FIR No.158 dated 07.10.2022, under Sections 120-B, 376, 420, 506 of the Indian Penal Code and Section 13 of Punjab Prevention of Human Smuggling Act, 2012, registered at Police Station Kabarwala, District Shri Muktsar Sahib.

Though the petitioner has earlier filed the petition bearing CRM-M-3051-2023 but the same was allowed to be withdrawn with liberty to the petitioner to file afresh with better particulars.

As per the facts of the case, FIR was registered on the statement made by Gurdev Singh wherein he alleged that his wife Kuldeep Kaur wanted to go Dubai due to the adverse financial condition the family was undergoing. They came in contact with Resham Singh and Kamaljit Kaur. Resham Singh and Kamaljit Kaur took the papers/documents from them in the month of June to send his wife to

Dubai and provided the Visa to his wife for Dubai. However, after

reaching Dubai, she came to know that agents, Resham Singh and Kamaljit Kaur had sold her. She kept on sending Whatsapp messages regarding her physical abuse being done by different villagers. He contacted many respectable persons for the redressal of his grievance, however, he failed to find any solution and made the request to register the case against Resham Singh and Kamaljit Kaur so as to bring his wife back from Dubai. Request was made to take legal action against the accused. On registration of the FIR, investigation commenced and the petitioner apprehending his arrest, approached the Court of learned Additional Sessions Judge, Sri Muktsar Sahib praying for grant of anticipatory bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide order dated 02.01.2023. Aggrieved by the same, petitioner is before this Court praying for grant of bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case. She has submitted that the petitioner is running a travel agency and has sent many persons abroad and hence, there is no question of committing the offence as alleged by the complainant. She has submitted that the petitioner has no criminal antecedents and he has been falsely implicated in this case for the reasons best known to the complainant. She has further submitted that now the complainant has compromised the matter with the petitioner and co-accused Kamaljit Kaur. She has submitted that the complainant does not want to take any action on the basis of the FIR lodged by him. She has further submitted that the allegations made in the FIR are totally false and frivolous and thus, he deserves to be granted bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He has placed on record the status report by way of affidavit of Mr. Balkar Singh, PPS, Deputy Superintendent of Police, Sub-Division Malout, District Sri Muktsar Sahib. He has submitted that after registration of the FIR, the victim was recovered on 24.01.2023 and her statement under Section 164 Cr.P.C. was recorded by learned JMIC, Malout on 25.01.2023. On medical examination of the victim, offence under Section 376 IPC was added. The victim deposed that she was raped at Oman against her wishes and petitioner was actively involved in the commission of crime. He submits that sufficient incriminating evidence has been collected so far and thus, the petitioner has no case for the grant of anticipatory bail.

After hearing counsel for the parties and perusing the record, it is apparent from the allegations made in the FIR by the complainant that his wife was send to Dubai by the petitioner as he was working as a travel agent. The wife of the complainant has informed that the petitioner under the garb of sending her abroad had rather sold her. Though counsel for the petitioner has contended regarding the compromise has been arrived between the petitioner and complainant, however, the victim/prosecutrix has specifically deposed in her statement under Section 164 Cr.P.C. that she was subjected to rape in Oman against her wishes. There are specific allegations against the petitioner that he has obtained papers from the victim and thereafter, provided Visa for Dubai. However, on reaching Dubai, she found herself to have been sold.

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.

24.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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