

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

101

CRM-M-42498-2023

Date of Decision: 02.09.2023

Sant Moni Gir

....Petitioner

Versus

State of Punjab

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amitoj Singh, Advocate
for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. This is second petition filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.92 dated 16.07.2022, under Sections 298 and 509 IPC (Sections 3 / 4 of Protection of Children From Sexual Offences Act), registered at Police Station Moonak, District Sangrur.

2. Learned counsel for the petitioner submits that in the first anticipatory bail petition filed before this Court, statement has been given that the offence under Section 3 / 4 of Protection of Children From Sexual Offences Act have been deleted and accused have been challaned only for a bailable offence. Therefore, first petition seeking anticipatory bail i.e. CRM-M-39974 of 2022 was allowed to be withdrawn by this Court vide order dated 15.12.2022.

3. Learned counsel for the petitioner further submits that thereafter, he moved another application before the Court of Sessions at Sangrur and the same was also dismissed by the Court of learned Additional Sessions Judge, Sangrur vide order dated 11.04.2023, only for the reason that the earlier bail application was dismissed vide order dated 28.07.2022, but factum of filing of the first petition seeking anticipatory bail was not mentioned in the application. Thus, considering the said part as highly condemnable, Court dismissed the bail application without looking at the aspect that the challan submitted before the Court of learned Magistrate, after completion of the investigation, is only under Section 298 of IPC, which is a bailable offence.

4. Notice of motion

5. Mr. Anurag Bansal, AAG, Punjab, who is present in Court, accepts notice on behalf of respondent/State.

6. On instructions from ASI Balvir Singh, learned State counsel submits that the present petition can be disposed of as the required facts have already been verified by him.

7. On being asked by the Court, learned State counsel after getting necessary information from ASI Balvir Singh stated that after completion of investigation final report under Section 173 Cr.P.C. has already been submitted, for the offence under Section 298 IPC. However, because of non-appearance of the accused/petitioner, proceedings for declaring the accused/petitioner as proclaimed offender have been initiated on asking of the prosecution.

8. I have heard learned counsel for the parties and gone through the punitive Section 298 IPC, for which petitioner has been challaned by the police.

A bare reading of Section 298 IPC makes it clear that offence is maximum punishable for imprisonment of one year, or fine, or both. Further, offence is non-cognizable, **bailable** and triable by the Court of any Magistrate.

9. Considering the aspect in its totality, this Court is unable to find out that, the reason when the **offence with which petitioner is challaned itself is bailable**, why petition for seeking anticipatory bail was moved by the petitioner. Only requirement for the petitioner is/was to furnish the requisite bail bonds to the satisfaction of the learned Magistrate, with an application to release him on bail.

10. More so, Court of learned Additional Sessions Judge, Sangrur has also failed in applying mind as nothing observed here above has been noticed. Filing of earlier application or its dismissal and not mentioning the said fact in the present application would be of no consequence, once, the offence for which accused has been challaned is **bailable**, non-cognizable and thus, there was no reason to dismiss the bail application of the petitioner/accused.

11. Considering the circumstances in totality, without expressing any opinion on the merits of the case, **this petition is disposed of by directing the petitioner-Sant Moni Gir to surrender before the trial Court concerned on or before 06.09.2023. On his doing so, he shall be released on regular bail by the trial Court subject**

to his furnishing requisite bail bonds and surety bonds to its satisfaction.

[SANJAY VASHISTH]
JUDGE

September 02,2023
rashmi

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no