



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

218

CRM-M-7261-2024

Date of decision: 28.05.2024

Gourav

...Petitioner

V/s

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Sandeep Sharma, Advocate for the petitioner.  
Ms. Mahima Yashpal, DAG Haryana.  
Mr. Vinod Kumar, Advocate for the complainant.

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**SUMEET GOEL, J. (Oral)**

1. This is a petition under Section 438 of Cr.P.C., 1973 for grant of anticipatory bail to the petitioner in FIR No. 733 dated 28.11.2023 registered for offences punishable under Section 323, 34, 376, 379-A and 506 of IPC, at Police Station Sadar Bhiwani.

2. The FIR, as spelt out in the present petition, is as follows:

*“Statement of Sonam D/o Vijay Kumar R/o Village Manheru and age 22 years Mobile No. 9416211508 stated that I am a resident of the above mentioned address and I am studying B.Tech. from Jhajjar. We are 2 sisters and my father is a private taxi driver. I live with my sister, mother and grandmother at my house. On dated 26.11.2023, I was going to Gourav for getting my phone. Gourav was sitting at the Chowk, then I asked him to give me my phone and then Gourav gave my phone to Nikhil. Then Gourav's mother Anita and Gourav's sister Deepika also came and then Gourav's mother Anita snatched Original Documents like Marksheet (Class 10th), Polytechnique Diploma and Computer Diploma, Aadhar Card, PAN Card, Bank's Passbook from me and when I started shouting my sister Solan and my mother Meena reached at the site. Then all of them started beating me, my sister and my mother also broke my phone and in between Anil and Gourav's father Satbir also came there who also injured my mother. Me and Gourav always talked about the rivalry between our families over telephonic calls*



*and eventually we became friends. Around 2 years back, Gourav called me at Huda Park Bhiwani and after clicking my photographs, Gourav started blackmailing me and asked me to build physical relationship with him and if you did not do so, I would show these photographs to your family. Because of the photographs, for the first time, Gourav raped me at a cafe in front of Thana Sadar Bhiwani and continued black mailing me and forcefully made physical relations with me. He also had forceful sex with me at a café near Hansi Gate Bhiwarm Then, he asked me to buy him a phone and then I brought an Apple I Phone-1-1-out of fear for him and I made a down payment from my account and the monthly installments are also deducted from my account. Even then, Gourav did not desist from his actions and continued blackmailing me and I got fed up from his actions and I told him to show the photographs to whoever you want to and return me my phone and then he said you come to the Chowk and take your phone. When I reached there to get my phone, he started beating me and, in this quarrel, my mother and sister got injured and I have come here with my family to give statement and strict legal actions must be taken against all of them. Statement is written, heard and is correct. SD-Sonam”*

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question by the Police in connivance with the complainant. The petitioner and the complainant had a consensual affair earlier and have been visiting number of places as also staying together & spent quality time with each other since the year 2018. Learned counsel has further argued that the relationship between the petitioner and the complainant came to the knowledge of the family of the complainant who were unhappy with the said relationship and hence the petitioner has been falsely implicated into the FIR in question.

4. A status report dated 19.03.2024 has been filed on behalf of State of Haryana; relevant whereof reads as under:

*“12. That as per record of concerned Police Station, two other FIR's are registered against the present petitioner.*

*(a) FIR No 711 dated 20.11.2023 U/s 323,34,427,452,506 IPC is registered at P.S Sadar, Bhiwani against the present petitioner and the*



*present petitioner is on bail in this FIR by the Ld. Session Court, vide order dated 22.02.2024 and the final report u/s 173 Cr.P.C is submitted in the Ld. Court on dated 06.03.2024.*

*(b) FIR bearing no 100 dated 05.03.2024 U/s 354 A, 506 IPC was registered at P.S Sadar, Bhiwani against the present petitioner after getting interim bail in FIR No 733 dated 28.11.2023 from the Hon'ble High Court because as per complainant the present petitioner is threatening the complainant after getting the interim bail in FIR No 733/2023. Copy of FIR is annexed as Annexure R-4 and the relevant record of the FIR is the chat of the present petitioner on Instagram and Whats App and the copy of the same is annexed as Annexure R-5.*

*13. The present petitioner has misused the concession of Ad-Interim Anticipatory bail granted by Hon'ble High Court.*

*14. That a fair and impartial investigation has been carried out in the case. The present petitioner is not law abiding citizen and has committed a heinous offence of rape as such the present petitioner is not entitled to any relief as prayed for and the petition of the petitioner is liable to be dismissed”*

Learned State counsel has made submissions in tandem with the above-said status report filed on behalf of the State of Haryana.

5. Learned counsel for the complainant has also raised submission in consonance with the submissions raised by learned State counsel.

6. I have heard learned counsel for the parties and have perused the record.

7. On 14.02.2024, notice of motion was issued in the petition and interim anticipatory bail was granted to the petitioner. The said order dated 14.02.2024 reads as under:

*“Apprehending his arrest in FIR No. 733 dated 28.11.2023 registered for offences punishable under Sections 323,34,376,379-A,506 IPC at Police Station Sadar Bhiwani, District Bhiwani; the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.*

*Inter alia contends that the petitioner and the victim/complainant were in consensual relationship and the FIR in question has been got*



*registered on account of fall out of such relationship & the petitioner is willing to join investigation and cooperate therein.*

*Notice of motion.*

*On asking of the Court, Ms. Mahima Yashpal, DAG, Haryana appears and accepts notice on behalf of the respondent-State.*

*Adjourned to 12.03.2024.*

*The petitioner is directed to appear before the Investigating Officer on 20.02.2024 at 11:00 A.M. in concerned Police Station and join investigation. In the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal/surety bond(s) to the satisfaction of the Arresting Officer/Investigating Officer. As and when further called by Investigating Officer, the petitioner shall join the investigation. He shall abide by the condition(s) enumerated under Section 438(2) of the Cr.P.C.”*

8. It would be apposite to refer herein to a judgment of the Hon’ble Supreme Court titled as ***Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another*** passed in ***SLP(Crl) No.1125-2022***, relevant whereof reads as under:

*“74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In ***State v. Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039]***, the Supreme Court held as under : (SCC p. 189, para 6)*

*“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable 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.*

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933]**, it was held as under : (SCC p. 313, para 19)

*“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”*

76. In **Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514]**, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to **Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1**



*SCC (Cri) 514]* and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar** [**Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468**] , the Supreme Court held as under : (SCC p. 386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is *prima facie* of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. P.T. Manokaran** [**D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345**] , **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain** [**State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213 : (2008) 1 SCC (Cri) 176**] and **Union of India v. Padam Narain Aggarwal** [**Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1**].)”

*Economic offences*

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In **Directorate of Enforcement v. Ashok Kumar Jain** [**Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510**], it was held that in economic offences, the accused is not entitled to anticipatory bail.”

15. In **Sushila Agrawal and others v. State (NCT of Delhi) and Another** reported in (2020) 5 SCC 1, Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held:-

“92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”



9. Indubitably, serious allegations have been made against the petitioner. The nature and gravity of the offences, the role attributed to the petitioner as also the factual matrix of the *lis* essentially leads to the unequivocal conclusion that the petitioner does not deserve the concession of anticipatory bail. The acts of crime alleged against the petitioner have a tendency to severely impact the fabric of society at large apart from that of victim and her family. It is pertinent to mention here that the relief of anticipatory bail is primarily aimed at ensuring personal liberty of an individual. However, while deciding a plea for grant of anticipatory bail, the Court is required to strike a balance between safeguarding individual rights and protecting societal interest. The Court must also consider the gravity of the offence; the role attributed to the accused; the impact on the Society as also the need for fair and free investigation.

10. At this stage, this Court deems it appropriate to ratiocinate regarding another pertinent aspect of the matter. The petitioner, after being granted the interim anticipatory bail on 14.02.2024, is stated to have threatened the victim. The status report submitted by the State of Haryana refers, *in extenso*, to the chats of the present petitioner with the complainant on Instagram as also on Whatsapp. A perusal of the said messages sent by the petitioner to the victim reflects not only obscenity therein but also the fact that the petitioner is deliberately misusing the concession of interim anticipatory bail earlier granted by this Court. An FIR bearing No.100 dated 05.03.2024 has also been registered against the petitioner under Sections 354-A and 506 of IPC at Police Station Sadar, Bhiwani on account of the petitioner threatening the complainant.



10.1. It would be apposite to refer herein to a judgment of this Court titled as *Dilpreet Singh vs. State of Punjab and another, Neutral Citation No.PHHC007557*, relevant whereof reads as under:

““10. As an upshot of above discussion, the following principles of law can be culled out:

|      |      |      |      |
|------|------|------|------|
| xxxx | xxxx | xxxx | xxxx |
| xxxx | xxxx | xxxx | xxxx |

(II) The conduct of an accused is an essential factor required to be considered by a Court while adjudicating upon the plea made by such an accused for grant of pre-arrest/anticipatory bail. An accused cannot seek shelter of provisions of Section 41/41-A of Cr.P.C. dehors his conduct. Such conduct has to be ascertained at all stages including the conduct of such accused before filing the plea for anticipatory bail as also during the period the accused is granted interim protection (if it has been so granted) by a Court. The conduct of an accused after decision of such a plea in his favour will, of course, be subject matter of a petition for cancellation of such anticipatory bail, if situation so arises.

(III) For considering conduct of an accused, the Court would be required to look into the following aspects:-

- (a) whether the accused is making himself available for interrogation by the investigating officer as and when required by such investigating officer.
- (b) whether the accused is, directly or indirectly, making any inducement/threat/promise to any person(s) acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Courts/Investigating Officer.
- (c) whether the accused has made any attempt to leave India without any permission from the concerned competent Court.
- (d) whether such accused has been involved in commission of any other offence during the pendency of the FIR in question.

The above said factors are only illustrative in nature since no exhaustive list of factors can be laid-down as every case has its own peculiar facts/circumstances.”

The above factual matrix clearly reflects that the petitioner has, indeed, misused the concession of interim anticipatory bail earlier granted to



11. In view of the nature as also seriousness of allegations & the conduct of the petitioner, it may not be possible for the investigating agency to unravel the entire truth if the petitioner is armed with a protective order. Therefore, in the considered opinion of this Court, custodial interrogation of the petitioner is necessary to take the investigation to its logical end and to conclude fair and meaningful investigation.
12. In view of the above, the instant petition deserves to be dismissed.
13. Ordered accordingly.
14. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.
15. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)  
JUDGE

May 28, 2024  
*Ajay*

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