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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11256-2024 (O&M)

DATE OF DECISION : 02.05.2024

HARJIT SINGH

V/S

STATE OF PUNJAB

... PETITIONER

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Ms. Kanwal S. Walia, Advocate for the petitioner.
Ms. Sakshi Bakshi, AAG, Punjab.
Ms. Shuchi Sodhi, Advocate (legal aid counsel)
for the complainant.

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HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case bearing FIR No. 19 dated 04.02.2024 under Sections 354, 354-A IPC and Section 8 of Protection of Children from Sexual Offences Act, registered at Police Station Kotwali Nabha, District Patiala.
2. The occurrence took place on 31.01.2024, when the petitioner is alleged to have sexually assaulted a 13 years’ old girl. As per the prosecution case, the petitioner was on visiting terms with the family of the prosecutrix. The petitioner offered the mother of the prosecutrix that he can arrange to procure modeling assignment in the film industry for her. Initially, the mother of the prosecutrix had been declining. However, the petitioner had been repeatedly insisting for the same. On 31.01.2024, the complainant along with the prosecutrix went to the office of the petitioner. The petitioner told that he had already arranged for a meeting with the

Director at Chandigarh. As such, he requested the complainant to allow the prosecutrix to accompany the petitioner for going to Chandigarh to meet the Director. As such, the complainant permitted her daughter to accompany the petitioner. On the way, the petitioner asked the prosecutrix to sit in his lap so that he can teach her how to drive the car and thereafter, the petitioner inappropriately touched the prosecutrix. They reached Chandigarh at about 12 P.M. However, the petitioner had been harassing the prosecutrix on the way by making inappropriate touch. The prosecutrix was taken to office where she was made to sit in a room for 2-3 hours. Thereafter, they started back from the said office. The petitioner offered the prosecutrix to stay in a hotel at Chandigarh, however, the prosecutrix refused for the same. On the way, the petitioner stopped the car at a *dhaba* on the pretext of having meal and she was made to sit to eat food, wherein the petitioner mixed something in the food of the prosecutrix and the petitioner again sat back in the car. The prosecutrix became unconscious. She regained consciousness on reaching her home city. Initially, being afraid the prosecutrix did not inform anyone about the aforesaid occurrence. However, on 04.02.2024, the petitioner became unwell and fell down. She was brought to Civil hospital; where she informed about the said occurrence to her father, who further reported the matter to the police, upon which the FIR was registered. The prosecutrix was medically examined on 04.02.2024 and her statement was recorded under Section 164 Cr.P.C. on 05.02.2024.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated by the father of the 'child victim'. The complainant is having criminal antecedents and the FIR has been lodged by concocting a conspiracy to abstract money from the petitioner.

The reliance has been placed upon the decision of Himachal Pradesh High Court in *Veer Bhadur @ Vishal Vs. State of Himachal Pradesh; 2021(2) SimLC 883; Sanjeev Kumar Vs. State of Himachal Pradesh; 2018(2) ILR (H.P.) 423* and Rajasthan High Court in *Arvind Vs. State of Rajasthan; 2016(2) RLW 1715*.

4. Learned counsel for the petitioner further contends that there is a delay of 4 days in lodging the FIR. The alleged occurrence is dated 31.01.2024 whereas the FIR was registered on 04.02.2024. It is further contended that the version given in the FIR makes it categoric that it is a twittered statement which has been given to the police. It is further contended that the family of the prosecutrix is having history of cases against them. One FIR No. 78 dated 11.07.2022 has been registered against parents of the prosecutrix. It is further contended that petitioner is ready to join investigation and face the trial.

5. Learned State counsel while referring to the status report by way of affidavit of Davinder Kumar, Deputy Superintendent of Police, Sub Division Nabha, District Patiala has opposed the bail application and submitted that keeping in view the age of the prosecutrix and the age of the petitioner, the petitioner is not entitled to the concession of pre-arrest bail. Even the medical examination report of the prosecutrix support the version of the prosecutrix.

6. Learned counsel for the complainant has opposed the bail application raising similar submissions.

7. I have considered the aforesaid contentions and perused the paper-book.

8. Though the FIR has been registered at the instance of the father

of the prosecutrix. However, the prosecutrix has also narrated the entire occurrence in her statement under Section 164 Cr.P.C. The age of the prosecutrix is 13 years. Merely on the ground of delay, at this stage, no interference can be drawn that the allegations against the petitioner are false. The petitioner is involved in another FIR No. 55 dated 01.04.2021 under Sections 409, 406, 420, 120B IPC, registered at Police Station Kotwali Nabha, District Patiala. As per the status report, though cancellation report was submitted before the trial Court, however, order of re-investigation of the said FIR has been passed by the Court. The allegations against the petitioner are regarding outraging the modesty of a minor victim are serious in nature.

9. The Hon'ble Apex Court in **Sumitha Pradeep Vs. Arun Kumar C.K. & Another; 2022(4) RCR (Criminal) 977** observed that in a case containing allegations of Sexual Assault of a 'Child Victim' set aside the impugned judgment and order granting anticipatory bail to the accused. The relevant portion of the observations by Hon'ble the Apex Court reads as under:-

12. In a case containing such serious allegations, the High Court ought not to have exercised its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to its logical conclusion. It goes without saying that appearance before the Investigating Officer who, has been prevented from subjecting Respondent No.1 to custodial interrogation, can hardly be fruitful to find out the prima facie substance in the allegations, which are of extreme serious in nature.

13. *The fact that the victim – girl is traumatized to such a high degree that her academic pursuits have been adversely impacted alone, coupled with the legislative intent especially reflected through Section 29 of the POCSO Act, are sufficient to dissuade a Court from exercising its discretionary jurisdiction in granting pre-arrest bail.*

14. *It may be true, as pointed out by learned counsel appearing for Respondent No.1, that chargesheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*

15. *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*

16. *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being*

canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

10. The ratio of the decision relied upon by the petitioner in **Veer Bhadur @ Vishal Vs. State of Himachal Pradesh; Sanjeev Kumar Vs. State of Himachal Pradesh; and Arvind Vs. State of Rajasthan; 2016(2) RLW 1715.** (supra) is not applicable to the facts of the present case as in the said cases, relief was sought under Section 439 Cr.P.C. whereas the prayer in the present petition is under Section 438 Cr.P.C.

- 11. As such, no ground for releasing the petitioner on pre-arrest bail is made out.
- 12. Dismissed.

02.05.2024 (HARPREET KAUR JEEWAN)
Janki JUDGE

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