

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

221

CRM-M-14709-2024

Date of decision: 16.04.2024

Ankit

....Petitioner

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vikram Sheoran, Advocate and
Mr. Parveen, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

Ms. Nanvi Gupta, Advocate as Legal Aid Counsel
for respondent No.2

SUMEET GOEL, J. (Oral)

1. The present second petition has been filed by the petitioner-
Ankit under Section 438 of Code of Criminal Procedure, 1973 (hereinafter
referred to as 'the Cr.P.C.') seeking pre-arrest anticipatory bail in FIR No.01
dated 02.01.2024 registered under Sections 376-D (later on amended to 376
of IPC) and 506 of IPC at Police Station Lakhan Majra, Rohtak.

2. The case set up in the FIR in question (as set out by the
petitioner in the present petition) is as follows:

*“That a complaint No.3369-D-PESI dated 27/12/2023 through SP office to
police station whose vernacular is this, To, Superintendent of Police Rohtak,
Subject: Forcefully done of wrong act. Sir, it is requested that I Rajni Dio Sh.
Pal resident of Vill: Basana Tehsil: Kalanaur District: Rohtak. My marriage
was solemnized with Akshay S/o Sh. Ashok resident of Garauti Tehsil: Lakhan
Majra District: Rohtak according to Hindu rites. That on dated 19.06.2022 a
baby girl was born to me whose name is Sanvi. On Dated 02.12.2022 my
husband was expired due to Road Accident. After Death of my husband I
become destitute and I came to my village at Basana after that on dated
06.06.2023 I came to my in-laws village Garauthi because my mother-in-law
has been expired and there is difficulty in making food by in-laws family.on*

dated 10:10.2023 at 02.30 AM my father-in-law knock the door of my room and my brother-in law Ankit forcefully came into my room and my father-in-law closed the door from outside and My brother in law forcefully does wrong act with me and does wrong act after refusing again and again does wrong act with me. My father-in-law and my brother-in-law said to me that if you tell about this to someone then we will kill you. Legal action should be taken against the accused so that justice can be done."

3. The petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court i.e. CRM-M-11448-2024 which was dismissed as withdrawn on 04.03.2024 with liberty to file afresh on the same cause of action with better particulars.

Thereafter, the present petition i.e. the second petition for grant of anticipatory/pre-arrest bail has been preferred by the petitioner on 18.03.2024.

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. From the bare perusal of the FIR, the allegations levelled against the petitioner are general and vague in nature. Learned counsel has further submitted that there is inordinate and unexplained delay of 03 months in lodging the instant FIR. Learned counsel has further submitted that a false and fabricated story has been concocted in order to extort money from the petitioner and an attempt has been made to falsely implicate him. It has been further argued that there is no need for custodial interrogation of the petitioner, as nothing incriminating remains to be recovered from him. Moreover, there is no likelihood of the petitioner absconding from the process of justice in case he is enlarged on pre-arrest bail.

5. Learned State counsel has vehemently opposed the grant of anticipatory bail to the petitioner on account of the present petition being

non-maintainable as it is a second petition for grant of anticipatory bail and there is no availability of fresh relevant material to entertain the second anticipatory bail petition. Learned State counsel has submitted that the first petition was dismissed as withdrawn on 04.03.2024 before this Court. Learned State counsel, opposing the plea in hand on merits, has submitted that the petitioner had established forcible physical relations with the complainant who is his widow sister-in-law (bhabhi) & threatened her. Thus, custodial interrogation of the petitioner is pertinently required for an effective investigation in view of the nature of allegations. Thus, she has prayed for dismissal of the instant petition.

6. Learned counsel for respondent No.2 has made submissions on the similar lines as aforesaid.

7. I have heard the learned counsel for the parties and have gone through the available records of the case.

8. It would be apposite to refer herein to a judgment passed by Hon'ble Supreme Court titled as ***Sumitha Pradeep vs. Arun Kumar C.K. & anr., 2022 LiveLaw (SC) 870***; relevant whereof reads as under:-

“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 custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. The allegations made in the FIR against the petitioner, who is brother-in-law of complainant, relate to committing wrong acts with the complainant forcibly and extending threats in case complainant disclosed the same to anyone. The allegations raised against the petitioner are extremely serious in nature. The veracity, relevance and weightage required to be attached to affidavits (Annexures P-3 to P-5) cannot be considered at this stage when complete investigation is yet to be undertaken. Even if it be assumed that no recovery is to be made from the petitioner, this by itself would not be sufficient cause to grant anticipatory bail to the petitioner. The nature of allegations made against the petitioner, especially the fact that the petitioner is accused of having sexually assaulted his own widow sister-in-law, disentitles him for grant of anticipatory bail. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail. Moreover, custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and learned trial Court shall proceed without being influenced with this order.
11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

April 16, 2024
Ajay

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