

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102+203

CRM-M-15012-2024(O&M)
Date of Decision:- 26.04.2024

Harish Chander Sharma

....Petitioner

Vs.

State of Punjab and Anr.

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amar Vivek Aggarwal, Advocate (through V.C.) with
Ms. Richa Sharma, Advocate for the petitioner.

Mr. H.S.Deol, Sr. DAG, Punjab.

AMARJOT BHATTI, J. (Oral)

CRM-18242-2024

This is an application u/s 482 Cr.P.C. for placing on record the
zimni orders as Annexure P-20 to P-25.

For the reasons stated in the application, the same is allowed.
The accompanying documents as Annexure P-20 to P-25 are taken on
record, subject to just exceptions.

Application stands disposed of.

CRM-M-15012-2024

1. The petitioner – Harish Chander Sharma has filed this second
petition under Section 438 Cr.P.C. for grant of concession of anticipatory
bail in FIR No. 49 dated 08.09.2014, under Section 363-A of IPC and

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Sections 328, 342, 370, 376 of IPC, Sections 3, 4 of POCSO Act, Section 3 of Child Labour Act (added later on), registered at Police Station Satnampura, Kapurthala.

2. The facts of the case are that Maksudan Sahni gave his statement to the police that he was residing in Phagwara for the last 12 years along with his wife and children. The victim was about 12 years of age. His wife was doing the work of domestic help in the houses. His daughter i.e. victim was studying in 3rd standard and used to visit the house of Kulwinder Kaur who was known to him. On 04.09.2014 at about 9:00 AM the victim went to the house of Kulwinder Kaur. He went to her house at 2:00 PM to bring his daughter back but Kulwinder Kaur told him that she did not want to go back home. His daughter did not return till late evening. At about 8:00 PM he again went to the house of Kulwinder Kaur to bring her daughter back but Kulwinder Kaur refused to send her. He had a talk with their neighbour and owners of the houses where his wife used to work. They went to the house of Kulwinder Kaur but even then she did not handover his daughter to him. Rather he was told that the victim had already left the house. He suspected Kulwinder Kaur and her son Amroop Singh in the kidnapping of his daughter. Thereafter they left the house by locking the same. The matter was reported to the police. The victim was recovered and her statement was recorded under Section 164 Cr.P.C. on 16.09.2014 where she named the present petitioner. Initially the FIR was registered under Section 363-A and Sections 328, 342, 370 and 376 of IPC were added later on. During investigation, DDR No.13 dated 10.11.2023 was recorded and offences under Sections 3 and 4 of Protection of Children from Sexual Offences Act (POCSO Act) were

added.

3. Learned counsel for the petitioner pointed out that the first anticipatory bail application filed by the petitioner was rejected by District and Sessions Judge, Kapurthala vide order dated 22.09.2022 which is Annexure P-12. Thereafter, he filed anticipatory bail application before this court bearing CRM-M-45157-2022 which was declined vide order dated 17.04.2023. Copy of the order is Annexure P-13. Thereafter, the present petitioner approached the Hon'ble Apex Court and filed anticipatory bail application bearing Special Leave to Appeal (Crl.) No. (s).5891-2023 in which he was granted interim bail. The copy of said order is Annexure P-14. However, the offence under Section 4 of POCSO Act was added, therefore the said bail application was dismissed as withdrawn vide order dated 04.10.2023 which is Annexure P-15. He filed second anticipatory bail application before the District and Sessions Judge, Kapurthala which was ultimately declined by Judge Special Court, Kapurthala vide order dated 13.02.2024 which is Annexure P-18. Now the challan has been presented and proclamation proceedings have been initiated against him. The copies of interlocutory orders passed in the aforesaid trial are Annexure P-20 to P-25.

4. The learned counsel for the petitioner argued that he had already joined the investigation. As per the contents of statement recorded under Section 164 Cr.P.C. (Annexure P-2), there are no allegations of rape against him. He is falsely implicated in this case. He has also placed on record translated copies of affidavits of complainant and his daughter (Annexure P-4 and P-5) to support his version. He is ready to join the investigation as well as face the trial. It is submitted that his anticipatory

bail application may be allowed.

5. The bail application is opposed by learned State counsel. It is argued that the allegations levelled against the present petitioner are specific and serious in nature. The petitioner has been named by the victim in her statement recorded under Section 164 Cr.P.C. There is report of the Chemical Examiner of Laboratory according to which Spermatozoa were detected in the contents of Exhibit-1 tested in the laboratory and as per the report of Medical Officer, the possibility of rape could not be ruled out. During the course of investigation, the Station House Officer submitted his inquiry report for cancellation of the case which was accepted by Deputy Superintendent of Police, Phagwara. However, Senior Superintendent of Police, Kapurthala recommended the SHO Police Station Satnampura to complete the investigation and to present the challan. Now after the completion of investigation challan is presented before the trial Court and the proclamation proceedings have been initiated as the presence of present petitioner could not be procured. Therefore, the anticipatory bail application filed by the petitioner deserves dismissal.

6. I have considered the arguments and have gone through the record carefully. It is a matter of record that first anticipatory bail application filed by the petitioner was declined by the court of learned Additional Sessions Judge, Kapurthala vide order dated 22.09.2022 and thereafter the anticipatory bail application filed by the petitioner was also declined by this court in CRM-M-45157-2022 vide order dated 17.04.2023 which is Annexure P-13. The petitioner approached the Hon'ble Apex Court and filed anticipatory bail application bearing Special Leave to Appeal (Crl.) No.(s).5891-2023 in which he was granted interim relief

vide order dated 15.05.2023 which is Annexure P-14. Thereafter, on 04.10.2023 the said anticipatory bail application was dismissed as withdrawn which is Annexure P-15. Learned counsel for petitioner explained that the said anticipatory bail application was withdrawn as new offence under Section 4 of POCSO Act was added in the present case. Thereafter, he again approached the court of District and Sessions Judge, Kapurthala for grant of anticipatory bail which was declined vide order dated 13.02.2024 which is Annexure P-18 and ultimately present anticipatory bail application has been filed by the present petitioner.

7. In the case in hand, the victim was ultimately brought back from Bihar and her statement was recorded under Section 164 of Cr.P.C. which is Annexure P-2. The perusal of said statement shows the name of present petitioner but without any allegation falling under Section 4 of POCSO Act. Despite given sufficient time, learned State counsel has failed to place on record any supplementary statement of the victim in support of offence under Section 4 of POCSO Act which was added later on vide DDR No.13 dated 10.11.2023. The interim relief was granted in favour of the present petition as per order dated 15.05.2023 (Annexure P-14) and the said bail application was withdrawn as per order dated 04.10.2023 (Annexure P-15). Obviously during this period the present petitioner must have joined the investigation of the case. At present, after completion of investigation challan is already presented and in order to procure his presence proclamation proceedings have been initiated.

8. Considering the aforesaid facts, the allegations levelled against the petitioner are to be seen after recording of evidence by the learned trial Court. He is ready to join the investigation and face the trial. Therefore,

no purpose would be served by sending him behind the bars at this stage. Without expressing my mind on the merits of the case, the anticipatory bail application filed by the petitioner – Harish Chander Sharma is allowed. He be not arrested. Since challan has been presented in the court. Petitioner is directed to surrender before the trial Court/Duty Judge within seven days from today and be released on bail to the satisfaction of trial Court/Duty Judge concerned.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly.

26.04.2024

Sunil Devi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(AMARJOT BHATTI)
JUDGE