

2024:PHHC:066106



**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

287

CRM-M-18054-2024 (O&M)

Date of decision: 14.05.2024

Sukhbir Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sidhant Vermani, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Rishu Mahajan, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)**1. CRM-20362-2024**

Allowed as prayed for, subject to all just exceptions. Documents
are taken on record as Annexures R-1 and R-2.

2. CRM-20739-2024

Allowed as prayed for, subject to all just exceptions. Copy of the
compromise is taken on record as Annexure P-4.

3. CRM-M-18054-2024 (O&M)

Through the instant petition, filed under Section 438 of Code of
Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR
No. 18, dated 11.02.2024, under Sections 363 and 366 of IPC (Section 120-B

of IPC and Section 6 of POCSO Act were added later on) at Police Station Civil Lines, Amritsar.

4. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was initially registered under Sections 363 and 366 of the IPC on the basis of the statement recorded by the complainant 'J' (*name withheld*) on 11.02.2024 alleging therein that the prosecutrix 'A' (*name withheld*), who was his minor daughter, aged about 16 years and 06 months, had gone to DAV College, Lawrence Road, Amritsar on 08.02.2024 about 10:30 AM, to take her examination but did not return. He had been making search for her but could not find her. He suspected that the accused Gaurav Singh @ Gaurav, in connivance with his mother Manjit Kaur, brother Saurav and sister Priya, had kidnapped his daughter on the pretext of performing her marriage with himself. After registration of FIR, investigation proceedings were initiated. In the meanwhile, the petitioner and the prosecutrix moved an application for protection of their life and liberty by filing a criminal writ petition bearing number **CRWP-1405-2024** before this Court. On receipt of notice of the said petition, the Incharge of concerned Police Station was informed. He apprehended accused Gaurav Singh and Manjit Kaur and recovered the minor prosecutrix from their custody on the basis of the identification of the mother of the prosecutrix on 27.02.2024. The co-accused Gaurav and Manjit Kaur were taken into custody and the prosecutrix was ordered to be kept in safe custody at State Aftercare Home, Nari Niketan, Amritsar on 27.02.2024. On 28.02.2024, medical examination of the prosecutrix was conducted. Her statement under Section 164 of Cr.P.C. was recorded on 29.02.2024 and she stated before the Magistrate that on the

fateful day, she had gone to her college, from where, she had received a call on her mobile phone from the present petitioner, who is uncle of accused Gaurav, to come to Dhariwal. They got filed a protection petition of herself and co-accused Gaurav in the Court. She also alleged that she had done all this under the pressure and upon asking of the present petitioner and was living under their pressure. She also disclosed that she had taken her examination of Class 11th. Subsequently, her statement under Section 161 of Cr.P.C. was also recorded, wherein she disclosed that she had been enticed away by the co-accused Gaurav and had been taken to his house. She was kept confined in a room by the accused Gaurav and Manjit Kaur, wherein accused Gaurav had ravished her. She also alleged that thereafter, accused Gaurav, his mother Manjit Kaur and the present petitioner, in conspiracy with each other, had got filed the aforesaid writ petition before this Court with an intention to get their marriage solemnized and when they came to know about lodging of the FIR of this case, then they were trying to flee but were apprehended by the police. The investigation is underway. The petitioner had moved an application for grant of pre-arrest bail before the Court of learned Additional Sessions Judge, Amritsar but the same had been dismissed, vide order dated 18.03.2024.

5. It is argued by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He was not named in the FIR. In fact, the prosecutrix was having a love affair with co-accused Gaurav and had gone along with him as per her own consent and had decided to live with each other and marry once they attained the marriageable age. The co-accused Gaurav and the prosecutrix had filed writ petition bearing number

CRWP-1405-2024 before this Court as the parental family of the prosecutrix was against their relationship. The petitioner had no role or interference in the same. He was entangled in this case on the basis of the statement allegedly recorded by the prosecutrix on 04.03.2024, though earlier she did not implicate him in commission of subject offences. Rather, the relations between the family of the co-accused Gaurav and Manjit Kaur with him and his family were not cordial and previously, a compromise took place in this regard. No direct or indirect role had been played by the petitioner in this case and he could not be implicated even with the aid of Section 120-B of IPC. Learned counsel for the petitioner has drawn attention of this Court to the document Annexure P/4, which is copy of a compromise, shown to have been arrived at between the father, mother and other family members of accused Gaurav on one hand and his wife and himself on the other hand on 19.06.2019. It is further argued that the custodial interrogation of the petitioner is not required. He is ready to join the investigation. His detention in custody would not serve any useful purpose. Hence, it is argued that the petition deserves to be allowed.

6. Status report has also been filed by the respondent-State, wherein it is submitted that the investigation so far conducted has revealed that in pursuance of a criminal conspiracy hatched with by the petitioner, who is paternal uncle of accused Gaurav Singh with him as well as mother Manjit Kaur, the prosecutrix was kidnapped and had been repeatedly ravished by the accused Gaurav. It is argued by learned State counsel, assisted by learned counsel for the prosecutrix and her father/complainant, that the allegations against the petitioner are serious in nature. He conspired with the co-accused

Gaurav, who is his nephew, and with his mother Manjit Kaur and in pursuance of that conspiracy, the prosecutrix had been taken out of her lawful guardianship and kept confined in the house of Gaurav and his mother and had been repeatedly ravished. It is submitted that the custodial interrogation of the petitioner is required for thorough investigation in the matter. He was specifically named by the prosecutrix at the time of recording of her statement under Section 164 of Cr.P.C. on 29.02.2024 as well as in her statement recorded under Section 161 of Cr.P.C. as on 04.03.2024. It is, therefore, argued that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable and have also gone through the record carefully.

8. The parameters for grant of anticipatory bail have been succinctly laid down by Honb'ble Supreme Court in a celebrated judgment cited as ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others : 2011 (1) RCR (Criminal) 126***, wherein the following observations were made:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections [34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.”

9. On applying the above discussed position of law to the peculiar facts of the present case, it emerges that as per allegations, as on 08.02.2024, the minor prosecutrix had gone to DAV College, Amritsar to give her examination for 11th Class and did not return back. In the FIR lodged by the complainant, i.e. father of the prosecutrix, on 11.02.2024, he had taken the name of the accused Gaurav Singh, Manjeet Kaur and sister and brother of Gaurav Singh alleging their involvement in the kidnapping of her daughter. The documents placed on record reveal that the prosecutrix and the

co-accused had filed a criminal writ petition bearing **CRWP-1405-2024** on 12.02.2024 seeking protection to their life and liberty as against the complainant and his family members alleging therein that they were in love with each other and wanted to perform marriage, whereas the family members of the prosecutrix were adamant and were not consenting to their love affair and that is why she had come with co-accused Gaurav and both of them were apprehending danger to their life and liberty. It has also been revealed that the co-accused Gaurav and Manjit Kaur were apprehended on 28.02.2024, when they had come to attend the hearing in the aforementioned writ petition before the High Court and the prosecutrix was recovered at their instance. The prosecutrix took the name of the present petitioner in her statement as recorded under Section 164 of Cr.P.C. on 29.02.2024 as well as in her subsequent statement as recorded under Section 161 of Cr.P.C. Her statement reveals that it was on receipt of a phone call from the petitioner to come to Dhariwal that she had gone there and it was with his active connivance that the aforesaid criminal writ petition was got filed from the prosecutrix and co-accused Gaurav before a Bench of this Court.

10. No doubt, the petitioner had not been named in the FIR but he has been specifically named by the prosecutrix and *prima facie* his complicity in commission of offence of kidnapping of the minor prosecutrix by hatching a conspiracy with the co-accused is made out. There is also a *prima facie* case on record to show that the prosecutrix was ravished by co-accused Gaurav in connivance with the present petitioner. The allegations against the petitioner are serious in nature. Keeping in view the gravity of allegations levelled against the petitioner, his custodial interrogation is must for conducting a

thorough investigation in the matter. The well settled proposition of law is that while considering an application for grant of anticipatory 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 including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

11. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

14.05.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No