

205

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRM-M-17258-2024

Date of decision: 20th May, 2024

Nitin Tomar

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S.S. Behl, Advocate and
Mr. Gaurav Vir Singh Behl, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.
Mr. Jagjit Singh, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
13	17.02.2024	Women Cell, District Ludhiana	376, 420 and 506 of IPC, 1860

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was lodged in this case on the basis of a written complaint filed by the prosecutrix (name withheld) who was posted as Branch Manager at one of the branches of Indian Bank at Ludhiana by alleging that the petitioner who was posted at some other branch of the same bank, had started visiting her branch in July, 2021. He induced her to enter into a relationship with him by making promise to marry her and by representing that he loved her and that even he had made discussion about her with his parents. She was being convinced by the



petitioner that his mother had assured that his marriage would be performed with the prosecutrix in October-November, 2021 by showing some whatsapp chats made with his mother. By emotionally exploiting her, the petitioner took her to his room on 22.03.2021, wherein she was forced to have physical intimacy with him and thereafter, he started maintaining sexual repeated relations with her on inducing her to perform marriage with her. She conceived in the month of June, 2021 and when she apprised about this fact to the petitioner, he made her consume some medicine, on the pretext that it was a pain-killer but after consuming the same, she started bleeding and suffered miscarriage. She confronted the petitioner about this fact and then he threatened her to keep quiet and otherwise to destroy her reputation in the bank and at the same time also tried to convince her, that if her pregnancy had continued, then his parents would not give their consent for marriage. He kept on putting off the question of performing marriage with her till October, 2022, when the prosecutrix came to know that the marriage of his brother was going to take place in December, 2022 and when she insisted for performing marriage with him, thereafter, instead of conceding to her request, he started questioning her integrity, thereby compelling the prosecutrix lodged a complaint against him with Himachal Pradesh State Commission for Women on 29.12.2022.

3. As per the further allegations, as soon as the petitioner came to know about lodging of a complaint by the prosecutrix against him, he manipulated the prosecutrix by pressurizing her on the one hand and by giving promise to marry her at the earliest on the other hand and therefore,



she was made to withdraw her complaint. She was subjected to forcible act of sexual intercourse on the night of 05.01.2023 by the petitioner, when he took her to his room. On getting up in the morning, she found herself locked in that room. She raised alarm and then the door was opened by another female employee of her bank only to know that the said employee too had been befooled and was also sexually exploited by the petitioner. She further alleged that subsequently she came to know that the petitioner was in the habit of making the single female staff members as his target and used to exploit them in the same manner. She also filed another complaint at National Women Commission of India as well as at her work place in August, 2023. After registration of this FIR, investigation proceedings have been initiated and are under way. The petitioner apprehending his arrest had filed an application for pre-arrest bail before the Court of learned Additional Sessions Judge, Ludhiana which was dismissed on 21.03.2024.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that it was a case of consensual relationship between two adult persons. It was the prosecutrix who used to ask for financial favours for her which were given by the petitioner. There was no medical evidence to show that she had become pregnant and any miscarriage of the same was caused by the petitioner. She was even senior in rank to him in bank. He had never made any promise to marry her. She had lodged this FIR, when their relationship turned sour. It was not a case of making any false promise to marry and at the most, it could be stated to be a case of breach of any such promise. His custodial



interrogations is not required. He is ready to join investigation. Therefore, it is urged that he deserves to be given concession of bail. To fortify his arguments, learned counsel for the petitioner has placed reliance upon authorities cited as '*Deelip Singh @ Dilip Kumar Vs. State of Bihar (2005) 1 SCC 88*', *Deepak Gulati Vs. State of Haryana (2013) 7 SCC 675* and '*Uday Vs. State of Karnataka (2003) 4 SCC 46*'.

5. *Per contra*, learned State counsel assisted by learned counsel for the complainant has resisted the plea of the petitioner for grant of pre-arrest bail on the ground that the allegations levelled against the petitioner are quite serious in nature by giving false promise to marry. The petitioner repeatedly ravished her, caused miscarriage of her pregnancy and then refused to marry her. It is contended that the custodial interrogation of the petitioner is required for thorough investigation of the matter by the police. The consent which was purported to have been given by the complainant was vitiated, because it was obtained by mis-representation. Therefore, it is argued that the petition does not deserve to be allowed.

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

7. The allegations against the petitioner are that he induced the prosecutrix to enter into a sexual relationship with her by giving promise to marry her and subsequently, by refusing to fulfill that promise and even caused miscarriage of her pregnancy, when she had become pregnant and had also criminally intimidated her thereby committing offences under Sections 376(2)(n), 420 and 506 of IPC. The Hon'ble Apex Court has laid



down certain parameters for grant of bail in a celebrated pronouncement cited as “*Siddharam Satlingappa Mhetre vs. State of Maharashtra and others : 2011 (1) RCR (Criminal) 126*”, the parameters for grant of anticipatory bail had been succinctly laid down by making the following observations:

“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.”

8. On applying the above discussed parameters, which are required for considering the question of grant/denial of pre-arrest bail, to the peculiar facts and circumstances of the present case, it has been observed that the petitioner and the prosecutrix had entered into consensual sexual relationship after February, 2021, when petitioner allegedly made a promise to marry her. As per the allegations in the FIR itself, the prosecutrix had become pregnant in June, 2021 and she suffered a miscarriage on administration of some medicine to her by the petitioner and when she confronted him, he had extended threats to keep quiet and otherwise to destroy her reputation. The prosecutrix was a senior colleague of the petitioner. They had admittedly become intimate to each other and their relationship has been continued till January, 2023, whereas, FIR of this case was registered only on 17.02.2024 though complaint had been lodged by the complainant at National Woman Commission of India in August, 2023. The



complainant being an educated woman and posted at a dominating post of the bank, wherein she was working, was obviously mature and intelligent enough to understand the significance and the consequences of the moral/immoral quality of the act, which she had agreed to have committed by entering into physical relationship with the petitioner. They are shown to have spent time together for a long period and it is a debatable question that desire to have sexual relationship was mutual and consensual or not? The allegations as levelled in the FIR, even assumed to be correct on the face of record, at best make out a case of consent of the prosecutrix having been obtained by misrepresentation. The fact that the consent of the prosecutrix for having physical intimacy was obtained by the petitioner by making any mis-representation by promise to marry her and breach of this promise are the questions which are to be decided by the trial Court on the basis of evidence to be led before it. The custodial interrogation of the petitioner for that purpose is not required in the opinion of this Court.

9. The petitioner is a permanent employee of a bank, therefore, there are no chances of his fleeing away from the process of law. No recovery is to be effected from him and therefore, his custodial interrogation is not required for that purpose also. There is no basis for the contention that he may tamper with the evidence or intimidate the witnesses. The severity of the allegations is not the only consideration for denying or granting bail to an accused and totality of the circumstances is to be seen for this purpose. Reliance in this regard can be placed upon '*Jagdish Nautiyal Vs. State (Delhi) 2014(12) R.C.R. (Criminal) 2991*' and '*Vikul Bakshi Vs. The State*



(NCT of Delhi) 2015(27) R.C.R. (Criminal) 266’, wherein the High Court of Delhi had granted benefit of pre-arrest bail to accused in similar facts and circumstances. At this stage, there is no material on record to show that the complainant had been impregnated by the petitioner and he had miscarriage of such pregnancy. Taking all the afore-discussed facts into consideration, I am persuaded to admit the petitioner to pre-arrest bail subject to his surrendering before the Investigation Officer/Arresting Officer within a period of ten days and thereafter as and when required and further subject to his furnishing personal/surety bonds to the satisfaction of the investigating officer/arresting officer; further subject to the condition that he will not threaten the complainant or visit the vicinity she resides and shall not tamper with the evidence or intimidate the witnesses and shall not leave the country without permission of trial Court.

10. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

20th May, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No