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202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-18409-2023 (O&M)
DATE OF DECISION : 16.10.2024

DALJIT SINGH GILL

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. GBS Dhillon, Advocate for the petitioner.

Mr. Davinder Bir Singh, Sr. DAG, Punjab.

Mr. Abhijeet Pratap, Advocate 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 FIR No. 0047 dated 16.03.2023 under Section 376 IPC, registered at Police Station Sadar Ludhiana, District Police Commissionerate Ludhiana.

2. Learned counsel for the petitioner *inter alia* contends that the complainant and petitioner were known to each other for almost 11 years and there was a consensual relationship between them. The petitioner has joined the investigation in compliance of the order passed by the Co-Ordinate Bench of this Court. It has been further submitted that even after filing of the present petition, the complainant had made more than 200 calls to the petitioner, as per the call details (Annexure P-4).

3. Learned counsel for the complainant has opposed the bail application on the ground that at the time of passing of the order dated 26.04.2023, condition No.4 was there, that the petitioner and his son will



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not try to approach the complainant or her daughter in any manner, directly or indirectly and make any effort to have communication with them. However, the said condition has been violated since the petitioner had made phone calls to the complainant. Learned counsel for the complainant further submits that even after the passing of the interim order dated 26.04.2023, the petitioner had transferred some amount in the bank account of the complainant as there were talks regarding compromise, but later on no further communication has been received.

4. Learned State counsel has confirmed that the petitioner has joined investigation. Challan has been presented and even charges have been framed.

5. On 26.04.2023, the petitioner was ordered to be released on interim bail by passing a detailed order, which reads as under:-

“ xxxx

Learned counsel for the petitioner, after taking through the contents of the FIR, has submitted that the entire allegations levelled in the FIR even if taken to be true do not constitute and confer to the ingredients of Section 376 IPC, which reads as under:

"376. Punishment for rape. (1) Whoever, except in the cases provided for in subsection (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever,- (a) being a police officer, commits rape (i) within the limits of the police to such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits



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rape in such area; or (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or (f) being a relative, guardian or teacher of, or a person in a of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be pregnant; or (i) commits rape on a woman when she is under sixteen years of age; or (1) commits rape, on a woman incapable of giving consent; or (k) being in a position of control or dominance over a woman, commits rape on such woman; or (1) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. Explanation. For the purposes of this sub-section. (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government; (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation; (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861); (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."

Learned counsel for the petitioner further submits that the complainant and the petitioner were known to each other for the last almost 11 years and have had a consensual relationship. He further relies upon a statement of the daughter of the complainant, submitted on 17.09.2022 (Annexure P-2) in another FIR No.183 dated 16.09.2022 under Sections 379-B, 354, 323, 506, 120-B, 34 of IPC, 67, 67-A IT Act, registered at Police Station Sadar Ludhiana, District Police Commisionerate, Ludhiana to contend that the petitioner was living with the complainant and, in fact,

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her daughter used to call him 'papa'. Learned counsel for the petitioner has further argued that the petitioner is 51 years old man, and in fact, the entire controversy is for transfer of 01 acre of land, which was done by the petitioner in favour of the complainant. However, subsequent to the said transfer, the son of the petitioner moved an application to the SDM for staying the sanctioning of mutation of the said land.

On the strength of the above, learned counsel for the petitioner prays for grant of anticipatory bail to the petitioner.

Learned State counsel assisted by learned counsel for the complainant have vehemently opposed the grant of extraordinary concession of bail to the petitioner on the ground that there is a extreme threat perception to the complainant and her daughter, which is evident from the contents of pen drive and the whatsapp chat appended by the complainant by virtue of CRM-17244-2023.

Learned State counsel submits that the said fact had been duly considered and recorded by the Court below also, and therefore, the antecedents of the petitioner are not neat. He further submits that there are few more FIRs against the petitioner as well as his son, and therefore, there is likelihood of an adverse incident, in case, the petitioner is granted the concession of bail.

Learned counsel for the complainant has taken the argument further and has submitted that a fraud has been played upon the complainant, as the petitioner has from the very beginning allured and enticed her of getting married and it was only on that pretext, the complainant got trapped in a relationship with him. He further submits that

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the petitioner to win her trust also filed a petition for divorce against his wife but without her knowledge, withdrew the same after eight months. As regards the statement of the daughter of the complainant (Annexure P 2), he submits that the same is under Section 161 Cr.P.C. and does not bear the signatures of her daughter and has no evidentiary value. He reiterates the threat perception to the life of the complainant and her daughter at the hands of the petitioner and his son. As regards the land in question is concerned, the complainant submits that the land, was transferred on account of huge amounts received by the petitioner but the same was also an act of fraud, as the petitioner got various other blank papers signed from her at the time of registration of sale deed in her favour.

Be that as it may, learned counsel for the complainant submits that the petitioner does not deserve the concession of anticipatory bail as he is holding an armed licence and he and his son are capable of causing any sort of action, which could lead to loss of human life. He submits that regards the land, though the sale deed is in her favour but the mutation is not being sanctioned due to the litigation entangled by the son of the petitioner.

At this stage, learned counsel for the petitioner has submitted that, in fact, the complainant has entered into an agreement to sell of the said land, and therefore, the entire story now being cooked up is false. He has shown an agreement to sell in vernacular during the proceedings, which is taken on record, according to which, the complainant has entered into an agreement to sell of the said land. Interestingly, in the said document, the complainant admits herself to be wife of the petitioner.



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Faced with the above, counsel for the complainant submits that the said agreement to sell is an act of fraud, as there was no occasion for the complainant to enter into such an agreement to sell immediately one day after the sale deed was executed in her favour. He further submits that, in fact, the stamp paper used for this agreement to sell was executed on documents on which the petitioner had got her blank signatures on the date of executing of the sale deed dated 19.07.2021. He further submits that, in fact, the proposed purchaser, in this agreement to sell is none other than a close friend of the petitioner, whom the complainant has named in the FIR also. He further submits that the complainant has not received any consideration from the said Bhupender Singh and the said document is a forged and fabricated document.

*Learned counsel for the petitioner has relied upon the judgments of Hon'ble Supreme Court of India in case titled as "**Shivshankar @ Shiva vs. State of Karnataka and Anr.**", 2019(18) SCC 204 and in case titled as "**Prabhakar Tewari Vs. State of UP and Anr.**" 2020 Cri.L.R.(SC) 472.*

*Learned counsel for the complainant has relied upon the judgment of Hon'ble Allahabad High Court in case titled as "**Harshvardhan Yadav Vs. State of UP and Anr.**", 2021(7) ADJ 295.*

*The Hon'ble Supreme Court of India has led down following guiding principles in case titled as "**Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr.**" (2020) 5 SCC 1 for deciding application under Section 438 Cr.P.C. which are as following:*



"88. This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC:

(1) Consistent with the judgment in Shri Gurbaksh Singh Sibbia and others v. State of Punjab, 1980 (2) SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(2) It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(3) Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. 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), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special



conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

(6) An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted prearrest bail.

(8) The observations in Sibbia regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of [Section 27](#), in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. [Sibbia](#) (supra) had observed that “if and when the occasion arises, it may be possible for the prosecution to claim the benefit of [Section 27](#) of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in [State of U.P. v Deoman Upadhyaya](#).”

(9) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See [Prakash Kadam & Etc. Etc vs Ramprasad Vishwanath Gupta & Anr](#)55; [Jai Prakash Singh](#) (supra) State through C.B.I. vs. Amarmani Tripathi 56). This does not amount to “cancellation” in terms of Section 439 (2), Cr. PC.



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(12) The observations in *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors*⁵⁷ (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh v. State of Maharashtra*⁵⁸ and subsequent decisions (including *K.L. Verma v. State & Anr*⁵⁹; *Sunita Devi v. State of Bihar & Anr*⁶⁰; *Adri Dharan Das v. State of West Bengal*⁶¹; *Nirmal Jeet Kaur v. State of M.P. & Anr*⁶²; *HDFC Bank Limited v. J.J. Mannan*⁶³; *Satpal Singh v. (2011) 6 SCC 189 (2005) 8 SCC 21 2011 (1) SCC 694 (1996 (1) SCC 667) 1998 (9) SCC 348 2005 (1) SCC 608 2005 (4) SCC 303 2004 (7) SCC 558 2010 (1) SCC 679 the State of Punjab*⁶⁴ and *Naresh Kumar Yadav v Ravindra Kumar*⁶⁵) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.”

Right of personal liberty granted by Article 21 is one of the most pious & important fundamental rights guaranteed by our Constitution. Arrest not only deprives right to personal liberty but also causes mental agony & stress and tarnishes the reputation of the entire family.

*After considering the matter in its entirety and considering the law led down by Hon'ble Supreme of India in case titled as "**Ansaar Mohammad Vs. The State of Rajasthan and Anr.**" in Criminal Appeal No.962 of 2022 decided on 14.07.2022 and keeping in view the law led down in *Sushila Aggarwal and Ors. (Supra)* and the fact that the petitioner is 52 years of age, and was in admitted consensual relationship for almost 12 years. The petitioner has made out a case for grant of anticipatory bail, however, subject to stringent conditions as follows:-*

1. The petitioner shall immediately surrender his armed weapon along with his arms licence with the Investigation Officer.

2. He will not approach, visit or in any manner be there within 500 meters of the vicinity of the residence of the complainant.



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3. *The petitioner shall also ensure that even his son does not go in the said area.*

4. *The petitioner and his son will also not try to approach the complainant or her daughter in any manner whatsoever directly or indirectly and any effort to have communication with them shall have its repercussions.*

5. *The petitioner shall declare his ordinary place of residence and the number used by him.*

6. *He will not switch off his mobile and in case of any technical glitch, he has to give an alternate number, which will be available in his absence.*

7. *He will mark his presence before the SHO concerned, after every 15 days and in case the SHO refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.*

8. *He will not leave the country without the prior permission of the Court, for which he will submit the copy of his passport also.*

*The petitioner is directed to join investigation on **28.04.2023** at **10:00 A.M.** before the Investigating Officer and cooperate with the Investigating Agency even thereafter.*

In the event of arrest, the petitioner be released on interim bail subject to furnishing personal/surety bonds to be satisfaction of the Arresting/Investigating Officer and the petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Adjourned to 12.07.2023.

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Liberty is granted to the State as well as the complainant to seek cancellation of bail, in case, the petitioner tries to induce or tamper with the evidence either on his own or through any other party.”

6. Keeping in view the age of the parties, the allegations levelled in the FIR and also considering the fact that there was a dispute regarding the transfer of some land by way of a sale deed, and disputed agreement-to-sell which are further alleged to have been under litigation and the litigations are pending before the Court of Law, as confirmed by both the counsel for the parties, the present petition is allowed and the order dated 26.04.2023 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

7. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

8. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.10.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

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