

2024:PHHC:063716



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

303

CRM-M-20837-2024 (O&M)  
Date of decision: 08.05.2024

Lakshay Abrol ...Petitioner

Versus

State of U.T., Chandigarh ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Stephen Masih, Advocate  
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, U.T., Chandigarh with  
Ms. Diksha Sharma, Advocate  
for the Union Territory, Chandigarh.

Mr. Akshay Mittal, Advocate and  
Mr. Ivan S. Khosa, Advocate  
for the complainant.

MANISHA BATRA, J. (Oral)

- Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR No. 30, dated 28.02.2024, under Sections 354, 354-A of IPC (*Section 376(2(e)) of IPC added later on*) at Police Station Sector 39, Chandigarh.
- Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 28.02.2024 the basis of a written complaint filed by the victim 'P' (*name withheld*)

alleging therein that she was residing in Chandigarh and was suffering from back pain. She had visited the house of the petitioner for therapy for her pain. She had taken two sessions from the petitioner. On 28.02.2024, she had again sought an appointment with the petitioner for another session of this therapy and was granted appointment for evening time. She went to his house at 05:00 PM. The petitioner had inappropriately touched her without her permission and had even asked her as to whether he could kiss her. She alleged that the petitioner had started her therapy with a wrong intention and he had not asked her to bring any female companion. Initially, a case under Sections 354 and 355-A of IPC was registered. The petitioner was arrested on the same day and was sent to judicial custody. He was extended benefit of bail by the Magistrate on 02.03.2024. However, subsequently, the victim recorded her statement under Section 164 of Cr.P.C., on the basis of which, offence 376(2)(e) of IPC was added (*in the petition, wrongly mentioned as Section 376-E of IPC*) as the victim alleged that during the course of the therapy as given to her on 28.02.2024, the petitioner had inserted his fingers into her rectum on the pretext that he was trying to lift her tail bone, then on the pretext of relaxing her muscles and diaphragm, lifted her T-shirt up to her shoulder and unhooked her undergarment and took off her undershirt and fondled her breasts and by pulling her pants and underpants off, he inserted his hand in her vagina and clitoris. Investigation is underway. The petitioner had moved an application for grant of pre-arrest bail before the Court of learned Judge, Fast Track Court, Chandigarh, which had been dismissed, vide order dated 08.04.2024.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the allegations as made in

the statement recorded under Section 164 of Cr.P.C. are false. The petitioner is a therapist by profession and does his work as per the standard procedure. Before treating the victim, he had told her about the procedure, for which, she had agreed but later on, she had levelled bald allegations against him, though he did not do anything wrong. No case for commission of either of the offences as alleged against him is made out. He has a permanent abode. He is ready to join investigation. His custodial interrogation is not required as he has already joined investigation in this case before addition of offence under Section 376(2)(e) of IPC. No useful purpose would be served by detaining the petitioner in custody. Therefore, it is argued that he deserves to be extended benefit of pre-arrest bail.

4. Status report has been filed by the respondent-U.T., Chandigarh submitting that on the basis of the statement recorded by the victim under Section 164 of Cr.P.C. on 04.03.2024, offence under Section 376(2)(e) of IPC has been added as the acts committed by the petitioner against the victim fall within the definition of that provision. Learned Public Prosecutor for U.T., Chandigarh, assisted by learned counsel for the complainant, has argued that the victim is an Australian citizen, who had been residing in India for the time being. There are quite serious allegations against the petitioner and in view of such allegations, custodial interrogation of the petitioner is must for conducting thorough investigation in the matter. He has further argued that simply because of the fact that the petitioner was previously extended benefit of bail as he was booked for commission of offences punishable under Sections 354 and 354-A of IPC at that time, he cannot seek benefit of pre-

arrest bail as a matter of right. With these broad submissions, it is urged that the present petition is liable to be dismissed.

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

6. 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.”

7. On applying the proposition of law as discussed in the aforementioned authority to the peculiar facts of the present case, it may be mentioned that the victim, who is an Australian citizen and presently has been residing in Chandigarh, had taken appointment from the petitioner, who is a Physiotherapist by profession and who, as per the representation made by him, conducts physiotherapy sessions for the treatment of back pain and other physical problems. The allegations against him are that prior to 24.02.2024, he had given two sessions of physiotherapy to the victim in the presence of female staff members and during morning times. The third appointment was given by him for evening hours as on 28.02.2024. The victim alleged that when she reached the house of the petitioner, where he runs his workplace as well, he was found to be alone and on the pretext of giving therapy to her, he had done the acts as narrated by her in her statement recorded under Section 164 of Cr.P.C. No doubt, at the time of lodging of FIR on 28.02.2024, the victim had not given details of the acts committed by the petitioner and had

simply alleged that the petitioner had touched her vital organs in most inappropriate manner and had even asked to kiss her, however, in her statement recorded under Section 164 of Cr.P.C. on 04.03.2024, she has given the details of the exact acts committed by the petitioner, which certainly fall within the definition of Section 375 of IPC and are punishable under Section 376(2)(e) of IPC, for which, he has been subsequently booked. Keeping in view the nature of allegations, which have been levelled against the petitioner, in my considered opinion, thorough investigation is required to be conducted in the matter, for which, custodial interrogation of the petitioner is must. Simply because he was previously extended benefit of regular bail by the Magistrate when he was booked only for commission of offences under Sections 354 and 354-A of IPC, no right has been created in his favour to seek concession of pre-arrest bail as a matter of right. 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.

8. 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.

08.05.2024  
*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

*Whether speaking/reasoned*  
*Whether reportable*

*Yes*  
*Yes*