2024:PHHC:063840

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

209

CRM-M-27933-2023 (O&M)
Date of decision: 08.05.2024

Safal **...Petitioner**

Versus

State of Punjab and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gagandeep Singh, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Mr. Karan Chaudhary, Advocate
for respondent No.2/complainant.

MANISHA BATRA, J. *(Oral)*

1. Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR No. 202, dated 05.08.2022, under Sections 376, 506 of IPC and Sections 3, 4 of the POCSO Act, 2012 at Police Station Civil Lines, Police District Batala.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 05.08.2022 on the statement of complainant 'S' *(name withheld)* alleging therein that he was living in a shared house along with his father and brothers. His brother

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document

Rajan Singh and his wife had expired and their minor son and daughter/victim, aged about 13 and 12 years respectively, were also residing with them. He further alleged that on 01.02.2022 at 02:00 PM, Tamanna, who is the daughter of his neighbor Tarsem, took his niece (victim) to her home for taking care of her child. The victim came back home at about 4-5 PM and was scared and she fell ill on the next day. On asking, she told that the petitioner had forcibly raped her by taking her to a separate room. However, out of shame, they could not immediately report the matter to the police but since the petitioner started threatening them, he got recorded this statement. After registration of the FIR, investigation proceedings were initiated. Medical examination of the victim was got conducted. Her statement under Section 164 of Cr.P.C. was recorded. The petitioner had filed an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Gurdaspur but the same had been dismissed, vide order dated 03.11.2022.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. In fact, it was only a neighbours' dispute, which has been given color of this criminal case by the complainant. There was delay of 04 days, which has not been satisfactorily explained. As per FSL report dated 01.12.2022, no human semen and male DNA were detected on the vaginal swabs on the victim. The petitioner has already joined investigation. No useful purpose would be served by sending him into custody. Therefore, it is urged that the present petition deserves to be allowed.

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document

4. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, has argued that although the petitioner has joined investigation but there are serious and specific allegations against him. He had committed aggravated penetrative sexual assault/rape upon the victim, who was only 12 years' old at that time. The delay in reporting the matter to the police might have occurred because of the fact that the victim, being of a tender age, was in fear and shock and she could not disclose the incident to her family members, which is very usual in such like matters. Though as per FSL report, no human semen was detected on the vaginal swabs of the victim but this alone cannot be a ground to grant concession of anticipatory to the petitioner, who is accused of ravishing a minor. The complainant and the victim, in their sworn depositions, have fully supported the prosecution version. The victim, while appearing as PW-2, has categorically stated that the petitioner had raped her on 01.08.2022, when she had gone to his house for the purpose of playing with the new born child of his sister and since she was afraid at that time, she could not immediately disclose the incident to anybody. Therefore, it is argued that the 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 :

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document

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."

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document

7. On applying the above discussed position of law to the peculiar facts of the present case, it emerges that the version of the victim is that on 01.02.2022, Tamanna, sister of the present petitioner, had called the victim, who was about 12 years' old at the relevant time, at her house to play with her newly born child and when she went to her house, then on finding opportunity, the petitioner, who was present in the house, had ravished her/committed aggravated penetrative sexual assault upon her. The victim has since been examined before the trial Court as discussed above and she has deposed in support of the case of the prosecution. No doubt, the petitioner has joined investigation, however, his custodial interrogation alone cannot be considered to be a good ground to grant him concession of anticipatory bail as observed by Hon'ble Supreme Court in ***Sumitha Pradeep v. Arun Kumar C.K. and another, 2022 (4) R.C.R. (Criminal) 977***, wherein it has been held that if no case for custodial interrogation is made out by the prosecution, then that alone cannot be considered to be a good ground to grant pre-arrest bail to an accused. 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

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document

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 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*

MOHAMMAD WASEEM ANSARI
2024.05.13 10:13
I attest to the accuracy and
integrity of this document