



102 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-27668-2024
Date of decision: 28th May, 2024

Manpreet @ Manjit Kaur and another

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Surinder Sharma, Advocate for the petitioners.
Mr. A.S. Samra, AAG, Punjab.
Mr. Amit Dhawan, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

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

FIR No.	Dated	Police Station	Sections
250	08.12.2023	Navi Baradari, Jalandhar	363, 366 of IPC, 1860 (Sections 376, 212, 216 and 120-B of IPC and Section 4 of POCSO Act were added later on)

2. Brief facts of the case relevant for the purpose of disposal of
this petition are that the aforementioned FIR has been registered on the basis



of statement recorded by the complainant 'S' (name withheld) alleging therein that on 07.12.2023 at about 5:15 PM, her two minor daughters 'M' (name withheld) and 'J' (name withheld) had gone to market on their *Activa* vehicle. At about 5:50 PM, her younger daughter 'J' (name withheld) came back home, while crying and informed her that when they had reached near petrol pump near Ladowali road, the accused Mandeep intercepted them and forced the victim 'M' to board on his motor bike and forcibly took her somewhere. The complainant alleged that she made search for her daughter and even went to the house of the accused but could not find her as his house was found locked. While alleging that the accused Mandeep had taken away her minor daughter on the pretext of performing marriage with her, she prayed for taking action in the matter.

3. Initially, a case under Sections 363 and 366 of IPC was registered. Investigation proceedings had been initiated. The victim 'M' was recovered subsequently. Her statement recorded on 28.03.2024 under Section 164 of Cr.P.C. wherein she stated that the accused Mandeep had taken her to the house of the accused Joga Singh and while extending beatings to her, had committed rape upon her. She also disclosed that thereafter the accused Joga Singh and petitioner No.2 Balkar Singh (father of accused Joga Singh) forcibly procured her signatures on blank papers. She was confined in the house of Joga Singh for about one month. The petitioner No.1 who is wife of Joga Singh used to give her milk mixed with some intoxicating substance, on consuming which, she used to feel dizziness



and in that condition, the accused Mandeep used to commit rape upon her. Accused Joga Singh was arrested. Offences under Sections 376, 212, 216 read with Section 120-B of IPC and Section 4 of POCSO Act were added later on. The investigation is under way. The petitioners apprehending their arrest moved an application for pre-arrest bail before the learned Additional Sessions Judge, Jalandhar which was dismissed vide order dated 17.05.2024.

4. The present petition has been filed by the petitioners on the grounds and it is argued by their counsel that the petitioners who are the wife and father respectively, of accused Joga Singh have been falsely implicated in this case. They were not named in the FIR. Their names were disclosed by the victim after three months of the registration of the FIR in her statement recorded under Section 164 of Cr.P.C. Infact, the victim has again absconded with the accused Mandeep @ Deepu, during the investigation of this case and she has even been sharing her photographs on social media. It is submitted that no recovery is to be effected from them. Their custodial interrogation is not required. They are ready to join the investigation. Therefore, it is urged that they deserve to be extended benefit of pre-arrest bail.

5. Mr. Amit Dhawan, Advocate has put in appearance on behalf of the complainant at this stage and has filed his *Vakalatnama*. Learned State counsel assisted by learned counsel for the complainant has vehemently argued that there are serious and specific allegations against the petitioners as they harboured the co-accused Mandeep and ensured his concealment in



their house, while knowing that he had kidnapped the victim and his apprehension had been ordered. They also facilitated commission of offence of penetrative sexual assault upon the minor victim by the accused Deepu @ Mandeep. Their custodial interrogation is required for thorough investigation of the matter by the police. The victim has again been taken away by the co-accused and a separate report has been lodged in this regard. She is yet to be recovered and the co-accused Deepu is yet to be arrested. There are chances of the petitioners tampering with the evidence and intimidating the witnesses, if extended benefit of bail. Therefore, it is argued that the petition does not deserve to be allowed.

6. The Hon'ble Apex Court has laid down certain parameters for grant of pre-arrest bail in a celebrated pronouncement cited as "***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others : 2011 (1) RCR (Criminal) 126***", 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.”

7. The allegations against the petitioners are that they gave shelter to the co-accused Mandeep @ Deepu who after enticing away and inducing the minor victim brought her to their house and while knowing fully well



that he was an offender they not only helped him in keeping her confined in their house for a period of about one month but also facilitated the commission of offence of penetrative sexual assault upon the minor victim by the co-accused. The allegations against the petitioners are grave in nature. In my considered opinion, for conducting thorough investigation in the matter, the custodial interrogation of the petitioners is required. 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. 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 is also a matter of discretion to grant or not to grant pre-arrest bail. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioners to seek concession of pre-arrest bail has been made out rather their custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, the petition is dismissed.

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



9. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

28th May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |