



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-39883-2024

Date of decision: 02.09.2024

Parminder Kaur @ Jindu

....Petitioner

V/s

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Arshdeep Singh Brar, Advocate for the petitioner.  
Mr. Anup Singh, AAG Punjab.  
Mr. Manpreet Singh, Advocate for the complainant.

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**SUMEET GOEL, J.**

1. The instant second petition has been preferred by the petitioner for grant of anticipatory bail under Section 482 read with Section 528 of BNSS, 2023 in FIR No.90 dated 21.06.2024 under Sections 376, 376-AB of IPC and Sections 6 and 21 of POCSO Act registered at Police Station Nihal Singh Wala, District Moga. It is worthwhile to note herein that the petitioner had earlier applied for grant of pre-arrest/anticipatory bail before this Court which was dismissed as withdrawn on 07.08.2024 as the same was not maintainable in view of judgment rendered by this Court titled as ***“Abhishek Jain vs. State of U.T., Chandigarh and another (CRM-M-31808-2024) 2024:PHHC:085784”*** and no opinion on merits was expressed therein.

2. The FIR in question (as stated in the petition) reads as under:

*“Statement of Dilshan Kaur daughter of Sardool Singh son of Labh Singh, resident of Wander, P.S. Smalsar District Moga. aged about 11 years, Mob. No.77400-14267. Stated that I am resident of above said address. My date of birth is 27.07.2013 and I am studying in 4th class at Oxford Education, Bhagta Bhai Ka. On 29.05.2024, I was taken by my Bhua Parminder Kaur alias Jindu wife of Karamjit Singh, resident of Dhurkot Ransinh to her home as there was summer vacation, where I stayed for*



*about 12 days. During these days, when my Bhua used to go for milking buffalos at around 4-5 AM and also used to collect dung and garbage etc, and it took around 2-3 hours for doing such works, during this period, my Fuffar Karamjit Singh took me while I was sleeping and misbehaved with me. By removing all my clothes and by keeping his penis on my private part, did wrong act on me. He would choke my mouth when I screamed. Sometimes, he used to bend me and put his penis behind my anus and sometimes he would lick my whole body with his tongue, causing me great pain and bleeding in my private part. When I tried to restrain my Fuffar, he used to give me beatings by stating that if I tell this thing to anyone, he will kill me. When I told my Bhua Jindu about this fact that Fuffar is doing wrong acts on me, she did not accept any of my words to be true and she did not care about me. Rather, deliberately, she used to spend more time in cattle yard or used to go here and there by making excuses and remained leave me alone in home with Fuffar and if I told my Bhua that I want to go to my village, she did not leave me to my village and she said that because I am young, so my Fuffar loves me. Then, after watching the wrong video on mobile phone, my Fuffar continued to treat me in the same way, which caused me more pain. Then my father brought me to the village after about 12 days, but I was very scared and threatened by my Fuffar, due to which, I was afraid. At first, I did not say anything to my mother and father. When I was sitting next to my mother, I started crying bitterly. My mother asked me what happened Dilshan, then I told my mother about the whole behaviour of Fuffar. Then my mother narrated entire facts to my father and my mother also talked to my Mama, who said, this is totally an injustice. We should deliver justice to the child and such a despicable person should be punished. My mother-father and Mama took me to Civil Hospital, Moga and got me admitted there, where doctors conducted my physical medical examination. Kindly award stern punishment to my Fuffar Karamjit Singh. Even my Bhua Jindu has not taken any action despite I told her the entire facts and she has ignored my words, so action should also be taken against her. Sd/- Dilshan Kaur, verified by Sd/- Jaswinder Kaur wife of Sardool Singh.”*

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question as there is a land dispute between the petitioner alongwith her husband with the family of the victim.

Learned counsel for the petitioner has further submitted that after the



registration of the FIR on 21.06.2024, the family of the victim had got transferred land measuring 08 kanals in their own name. Learned counsel has further submitted that the petitioner is a lady aged about 43 years who is willing to join investigation and cooperate therein. Learned counsel has further argued that no recovery is to be made from the petitioner. Thus, anticipatory bail is prayed for.

4. *Per contra;* the learned State counsel (assisted by learned counsel for the complainant) has opposed the grant of anticipatory bail to the petitioner by raising a preliminary submission that the provision for grant of anticipatory bail in respect of a case involving offence, as invoked in FIR in question, is barred by statutory provision contained in Section 438(4)/482(4) of BNSS, 2023. Further, it has been submitted that the husband of the petitioner is accused of sexually assaulting an 11 years old girl/child and the petitioner (herein) is also substantially involved into the same & hence her custodial interrogation is pertinent for requisite investigation. It has been further submitted that, in view of the serious allegations levelled against the petitioner, the benefit of anticipatory bail ought not to be extended to her. Accordingly, the dismissal of the instant petition is prayed for.

5. I have heard learned counsel for the parties and have perused the available record.

6. At this stage, it would be apposite to refer herein to a judgment passed by this Court titled as “***Mukesh Kumar vs. State of Haryana: Neutral Citation No.2024:PHHC:112507***”; relevant whereof reads as under:

“8. Sections 376(3), 376AB, 376DA and 376DB of IPC as also Section 438(4) of Cr.P.C., 1973 were brought in the statute book by way of criminal law (amendment) Bill, 2018. The statement of objects and



*reasons thereof reads thus:- “Recent incidents of rape and gang rape on women under the age of sixteen years and twelve years have shaken the conscience of the entire Nation. Therefore, the offences of rape and gang rape on women under the age of sixteen years and twelve years required effective deterrence through legal provisions of more stringent punishment. Some of the incidents in recent years have been marked by increased brutality and violence perpetrated on minor girls. This has fuelled demands from various sections of the Society to make the penal provisions more stringent and effective, immediate arrest of the accused and ensure speedy trial in such cases.”*

8.1. *To the similar effect are the provisions of Section 65(2)/Section 70(2) of BNS, 2023 and Section 482 of BNSS, 2023.*

8.2 *Ergo, what is conspicuous from these statutory provisions is the intent of the legislature that children are humanity’s future; even though born to individual families, yet the Society, Nation and Public have collective responsibility towards creating a safe, joyful and salubrious environment for overall development of children to grow and thrive in. Sexual violation of a child is a most reprehensible crime against a child, Family; in fact against the entire humanity. In our culture where a girl-child is held in reverence, merely looking at her with prurient curiosity is an act of grave moral turpitude. Whereas sexual violation is the most degenerate, deviant and repugnant act & it must be condemned and punished accordingly. Where a young girl-child is subjected to physical violation; she is actually a mere innocent child, who probably does not even fully understand what she has been subjected to. It is unimaginable what pain and suffering she will live through because of this horrific experience. At a tender age; when her world should have been all things insouciant; a springtime to revel in the delights of childhood, she has been robbed of her innocence. As has been aptly said- “safety and security don’t just happen, they are result of collective consensus and public investment. The children are owed, the most vulnerable citizens in our Society, a life free of violence and fear. Therefore, punitive measures must be such which act as forcible, definitive and effective deterrence.*

9. *Excluding access to bail (including anticipatory bail) as a remedy indubitably impinges upon human liberty. The principal enunciated by Lord Denning, which has met with approval from the Hon’ble Supreme Court reads thus:*

*“By personal freedom I mean freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his*



*lawful occasion without hindrance from any person..... It must be matched, of course, with social security by which I mean the peace and good order of the community in which we live.”*

*It is a settled canon of our jurisprudence that liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body. Personal liberty, deprived when bail is refused, is too precious a value of our jurisprudential system recognised that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamourise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of the fundamental right of liberty. After all, personal liberty of an accused is fundamental, suffering lawful eclipse only in terms of procedure established by law.*

10. *The essential question which calls for ratiocination is that, where the statute bars grant of pre-arrest anticipatory bail, whether the same can still be granted. This seeming conundrum has been considered in respect of statutes, other than Cr.P.C./BNSS, by the Constitutional Courts.*

10.1 *Dealing with the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989; [hereinafter to be referred as the 1989 Act] the Hon’ble Supreme Court in the case of **Prathvi Raj Chauhan** (supra) has held; insofar as the issue of maintainability of a plea for anticipatory bail in respect of offence(s) under 1989 Act is concerned; that such a plea would be maintainable provided such applicant is able to show that no prima facie case under the Act is made out or where non-granting of such plea would result in miscarriage of justice or abuse of process of law. More recently, the Hon’ble the Supreme Court in the case of **Shajan Skaria** (supra) has reiterated the ratio decidendi of the judgment of the Hon’ble Supreme in **Prathvi Raj Chauhan**.*

10.2. *Dealing with the provisions of Muslim Women (Protection of Rights on Divorce) Act of 1986; the Hon’ble Supreme Court in the case of **Rahna Jalal** (supra) has held that even if the statute bars grant of anticipatory bail yet the competent Court can consider granting it if prima facie case is not made out.*

11. *The Hon’ble Bombay High Court as also the Hon’ble Kerala High Court while dealing with the provision of Section 376(3) of*



*IPC; while relying upon the dicta of the judgments of the Hon'ble Supreme Court in case of **Prathvi Raj Chauhan** (supra) and **Rahna Jalal** (supra); have held that a petition for anticipatory bail cannot be said to be absolutely non-maintainable.*

12. *Thus, the conundrum; as to whether the anticipatory bail is maintainable under Section 438 of Cr.P.C. for offences under Sections 376(3)/376AB/376DA/376DB of IPC & under Section 482 of BNSS, 2023 for offences under Section 65(2)/70(2) of BNS, 2023; is set at naught. A plea for such anticipatory bail is maintainable and can be granted provided such an applicant is able to show that no prima facie case is made out qua such offences; where the case of the complainant/prosecution is prima facie false, motivated or mala fide or in a situation where non-granting of such anticipatory bail would amount to miscarriage of justice or abuse of process of law. There is no gainsaying that no exhaustive guidelines can possibly be laid down to govern such judicial discretion as every case, especially a criminal case, has its own factual conspectus.*

*This Court must immediately sound a word of caution herein. In case the Court deems it appropriate to grant such a plea for grant of anticipatory bail, the Court ought to accord cogent reasons therefor showing due and manifest application of judicial mind to the facts of a given case. To recall the immortal words of Lord Cardozo;*

*“The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to ‘the primordial necessity of order in the social life.’ Wide enough in all conscience is the field of discretion that remains.”*

13. *As a sequitur to the above rumination, the following principles emerge:*

I. *A plea for grant of anticipatory bail/pre-arrest bail; under Section 438 of Cr.P.C. for offences under Sections 376(3)/376AB/376DA/376DB of IPC & under Section 482 of BNSS, 2023 for offences under Section 65(2)/70(2) of BNS, 2023; is maintainable.*

II. *Such a plea can be granted only when judicial scrutiny of the factual matrix of such case reflects that; insofar as allegations pertaining to offence(s) under Sections 376(3)/376AB/376DA/376DB of IPC or Section 65(2)/70(2) of BNS, 2023 are concerned; “No prima facie case is made out” or “the case is prima facie false” or “the case*



*is motivated” or where “non-granting of such plea would cause miscarriage of justice or abuse of process of law.” It is neither fathomable nor pragmatic to lay down any exhaustive/conclusive parameters as to what would be the touch-stone to determine these aspects in a given case, as every case has its own peculiar factual matrix.*

7. A bare perusal of the FIR (along with other available material) reflects that the husband of the petitioner is accused of sexually assaulting an 11 years old girl child & the petitioner was told about the said assault by the victim but she had not taken any steps to prevent the same. On the contrary, it appears that the victim was told to keep her mouth shut whereinafter the victim has been again stated to be assaulted. With the assistance of the learned State counsel, this Court has perused the statement made by the victim before the concerned JMIC, which itself reflects clear allegations against the petitioner (herein). The plea raised by the learned counsel for the petitioner that the petitioner has been falsely implicated into the FIR in question on account of a property/land dispute, does not seem to be based on any tangible material. Accordingly, it cannot be said, at this stage, that the FIR is *prima facie* false or is motivated or mala fide.

8. Keeping in view the entirety of the facts and circumstances of the case; the present petition deserves dismissal on account of maintaibaility and also that the custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. Accordingly, the prayer for grant of anticipatory bail to the petitioner ought to be rejected.

### **Decision**

9. In view of the above, it is directed as follows:

(i) The petition, preferred by accused-Parminder Kuar @ Jindu, for grant of anticipatory bail in respect of FIR No.90 dated 21.06.2024 under



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Sections 376, 376-AB of IPC and Sections 6 and 21 of POCSO Act registered at Police Station Nihal Singh Wala, District Moga, is dismissed.

- (ii) Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigation/concerned Court shall proceed without being influenced with this order.
- (iii) Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)  
JUDGE

September 02, 2024  
*Ajay*

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