



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

CRM-M-41156-2024

Date of decision: 11.11.2024

Sandeep Kaur

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. J.K. Singla, Advocate with
Ms. Suman Rani, Advocate for the petitioner.
Mr. Anup Singh, AAG Punjab.
Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Nissim Aggarwal and Mr. Ojas Bansal, Advocates
for the complainant.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed on behalf of the petitioner seeking grant of anticipatory/pre-arrest bail under Sections 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as ‘BNSS’) in FIR No.50 dated 27.06.2024 registered for offences punishable under Sections 3, 4, 11(ii) of the Protection of Children from Sexual Offences Act (Amended) 2012, 2019 and offence under Sections 6, 10, 15, 16 of Protection of Children from Sexual Offences Act (Amended) 2012, 2019 vide G.D. No.25 dated 25.07.2024 (Annexure P-2) at Police Station Bajakhana, District Faridkot.
2. The case set up in the FIR in question (as spelled out in the present petition by the petitioner) is as follows:-

“Statement of Varinder Singh Son of Naib Singh Son of Ram Singh, resident of Near Dana Mandi, Village Ghania, aged about 34 years, M.No.73408- 55794 stated that I am resident of above-mentioned address and doing the work of Accounts on private basis at Bhagta Bhai Ka. My



marriage was solemnized with Sandeep Kaur daughter of Inderjit Singh, resident of Village Sidhana, District Bathinda in the year 2014. I have two sons. Elder Son Wajinder Singh and younger Gursharan Singh. About 4 years ago my wife Sandeep Kaur has developed illicit relations with Gurpreet Singh Son of Paramjit Singh, resident of Bagge Ke Khurd, District Ferozepur. That name was disclosed to me by my wife Sandeep Kaur herself. From last about 4 years my wife is residing in her parent's house. I have found so many obscene photographs of my wife with her paramour Gurpreet Singh from her personal Mobile Phone. In these photographs, my wife was forcefully penetrating private part of her paramour into the mouth of my two years minor son Gursharan Singh. In one photo, after holding hand of my son and giving private part of her paramour Gurpreet Singh. In these manners, these photographs are evidence for crossing the limit of sexual assault with my child by my wife Sandeep Kaur and her paramour Gurpreet Singh and in which committing-sexual assault of my minor child was clearly visible. Upon receiving photos and after publicity of this case in media then my wife is seen for admitting her fault/offence and in which admitting that I have committed mistake. I will produce the record pertaining to this before Hon'ble Court. FIR may kindly be registered under POCSO Act and other strict provisions against my wife Sandeep Kaur and her paramour Gurpreet Singh and proceedings be initiated. Statement got recorded, heard, correct. Legal action be taken against them. Sd/- Varinder Singh above said. Attested Sd/- Sikander Singh S.I./520 FDK, Police Station Bajakhana dated 27.06.2024."

3. Subsequently, vide GD No.025 dated 25.07.2024, the petitioner (herein) was arraigned as an accused. The same is reproduced as below:-

"Time 06-46 PM. It is mentioned at this time that I, S.I./S.H.O. departed along with colleagues vide Rapat No.19 and come back present in Police Station after investigation in Case/FIR No.50 dated 27.06.2024 under Sections 3, 4, 11 (2) of POCSO Act, Police Station Bajakhana. Secret and open investigation of the case was conducted after reaching Village Ghania. From my inquiry and investigation of the case till now and from the statement of complainant, Sandeep Kaur wife of Varinder Singh, resident of Ghania is found to be involved in the present case. Upon this, the above said Sandeep Kaur has been nominated as accused in the present case and offence under Sections 06, 10, 15, 16 of POCSO Act has been added in the present case. Further investigation in the present case is



to be conducted offence under Sections 3, 4, 11 (2), 06, 10, 15, 16 of POCSO Act. Copy of reports forwarded before Illaqa Magistrate Sahib and higher officers.”

4. Learned counsel for the petitioner has iterated that the petitioner has been falsely implicated in the instant case. Learned counsel has further recapitulated that the narrative in the FIR is contradictory and lacks credibility. Learned counsel has emphasized that the name of the petitioner was initially not mentioned in the FIR. He submits that the petitioner has been implicated later through GD No.25 dated 25.07.2024, nearly a month after the FIR in question was registered. According to the learned counsel, this delay in naming the petitioner raised questions about the validity of allegations against the petitioner and reflects an attempt to misuse the legal process against her. According to the learned counsel, the aforesaid circumstances indicate personal vendetta, driven by matrimonial dispute rather than actual culpability. Learned counsel has further iterated that the entire case of the prosecution against the petitioner is solely based on oral evidence which is fabricated and lacking any shred of truth. It has been further argued that the petitioner was neither present at the scene of the alleged incident nor committed any offence. Learned counsel asserts that the petitioner, being the mother of the victim, would never commit such acts against her own child, as alleged by the complainant. The name of the petitioner has been falsely roped into the instant case without any supporting evidence or proper investigation. It has been further argued that there is no need for custodial interrogation of the petitioner, as nothing incriminating remains to be recovered from her. Moreover, there is no likelihood of the



petitioner absconding from the process of justice in case she is enlarged on pre-arrest bail.

5. *Per contra*, learned State counsel has vehemently opposed the grant of anticipatory bail to the petitioner by arguing that the allegations made against the petitioner are serious in nature and custodial interrogation of the petitioner is pertinently required for eliciting the truth. According to him, the petitioner was involved in a serious offence and the prosecution has gathered sufficient evidence against her. A status report dated 03.11.2024 was filed by the State, relevant whereof reads as under:

“5. That in order to determine any kind of sexual assault upon the victim child Gursharan Singh, he has undergone medico legal examination on 03-7-2024 at GGS Medical College, Faridkot. In order to apprehend the prime culprit Gurpreet Singh efforts were made but he is still absconding to evade his arrest. The Mobile phone Redmi bearing IMEI No. 863045045079150 and IMEI No. 863045045079168, containing the photographs of the child Gursharan Singh being abused by the accused, was taken into possession vide seizure memo dated 15-7-2024. The mobile phone has been analysed by the Incharge, Cyber Investigation Unit, Faridkot and data has been converted into a Pen drive, provided to the I.O. for perusal. Which reveals no editing was made with the Photographs contained in the mobile phone.

Nomination of Petitioner and enhancement of offence:

*6. That during the investigation, the complicity of the present Petitioner has revealed being an abettor of the crime, accordingly the Petitioner has been nominated as additional accused vide **Rapat No. 25 dated 25-07-2024** and enhancement of offence **u/s 6, 10, 15, 16 POCSO Act** was made. Further the statements of other material witness. namely i) Sadhu Singh s/o Joginder Singh, ii) Pawan Kumar s/o Jagan Nath, iii) Sukhmander Singh s/o Piara Singh, iv) Ajaib Singh s/o Ram Singh, v) Bahadar Singh s/o Inder Singh. All the witness have established the present Petitioner had illicit relations with co-accused Gurpreet Singh and had left her matrimonial house and took her minor sons with her and started living with co-accused Gurpreet Singh.”*



6. Learned counsel for the complainant has strenuously opposed the grant of anticipatory bail to the petitioner. He submits that the petitioner is involved in a serious offence as she facilitated oral sex between her two years old son and her paramour Gurpreet Singh. Furthermore, explicit photographs have been extracted from the mobile phone of the petitioner which was duly verified by the investigating agency from the forensic laboratory to be genuine and authentic. According to him, in case the petitioner is enlarged on bail, it would in-fact affect the proper investigation of the case and therefore, the petitioner does not deserve the concession of pre-arrest/anticipatory bail.

7. I have heard the learned counsel for the rival parties and have gone through the available record of the case.

8. It would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as ***Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another*** passed in ***SLP(Crl) No.1125-2022***, relevant whereof reads as under:

“74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039], the Supreme Court held as under : (SCC p. 189, para 6)

“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of



tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das v. State of W.B.** [**Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933**] , it was held as under : (SCC p. 313, para 19)

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

76. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** [**Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514**], the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It



was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to **Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514]** and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar [Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468]**, the Supreme Court held as under : (SCC p. 386, para 19)

*“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. P.T. Manokaran [D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345]**, **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain [State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213 : (2008) 1 SCC (Cri) 176]** and **Union of India v. Padam Narain Aggarwal [Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1]**.)”*

Economic offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In **Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510]**, it was held that in economic offences, the accused is not entitled to anticipatory bail.”

15. In **Sushila Agrawal and others v. State (NCT of Delhi) and Another reported in (2020) 5 SCC 1**, Constitution Bench of this Court held that while considering an application for grant of pre-arrest 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 or likelihood of fleeing justice. The Court held:-



“92.4. 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.”

9. Indubitably, serious allegations have been levelled against the petitioner in the FIR. The alleged actions and conduct of the petitioner, particularly as the mother of the victimized child, are deeply concerning and have brought shame, casting a negative impact on the Society as a whole. Such actions, if proven true, are not only a violation of her duties as a mother but also reflect a disregard for the legal and moral responsibilities inherent in the mother-child relationship. The role of a mother is of care and nurturing the child and any deviation from this standard especially in a manner that harms one's own child, invites strict action under the law. The FIR in question was lodged on a statement made by the complainant Varinder Singh, who alleged that his wife (petitioner herein) had developed illicit relationship with co-accused Gurpreet Singh approximately 04 years ago. Since that time, the petitioner has been residing at her parental home. According to the complainant, he recently discovered two disturbing images of his 02 years old son on the mobile phone of his wife (petitioner herein). In these images, the petitioner's alleged paramour, Gurpreet Singh (co-accused), appears to be mistreating and abusing the young child. The complainant further asserts that these images have left him in a state of shock, as a father.



9.1. In the considered opinion of this Court, the alleged criminal act attributed to the petitioner has a tendency to severely impact the fabric of society at large. It is pertinent to mention here that the relief of anticipatory bail is aimed at ensuring personal liberty of an individual. However, while deciding a plea for grant of anticipatory bail, the Court has to strike a balance between safeguarding individual rights and protecting societal interest. The Court must also consider the gravity of the offence; the role attributed to the accused; the impact on the Society and the need for fair and free investigation. The relief must not unduly hamper the rights of the investigating agency to conduct free, fair and impartial investigation.

10. It is befitting to mention here that, given the severity of the allegations as also the nature of the conduct attributed to the petitioner, this Court is of the considered opinion that offence of such magnitude must be properly investigated and the truth must be brought on record. Moreover, while considering a plea for the grant of anticipatory bail, the Court ought to reckon with the magnitude and nature of the offence; the role attributed to the accused; the need for fair and free investigation. At this stage, there is no material on record to hold that *prima facie* case is not made out against the petitioner. The nature and gravity of the alleged offence and the specific role ascribed to the petitioner essentially lead to unequivocal conclusion that the petitioner does not deserve the concession of anticipatory bail. The argument raised by the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case and hence not required for custodial interrogation, is a mis-placed argument especially, in light of the nature, severity and seriousness of allegations levelled against the petitioner. The



bail in a case relating to POCSO Act, in a case titled as *Sumitha Pradeep vs. Arun Kumar C.K. & anr.*, = 2022 AIR Supreme Court, 5705; has held as under:-

“In a case containing such serious allegations, the High Court ought not to have exercised its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to its logical conclusion. It goes without saying that appearance before the Investigating Officer who, has been prevented from subjecting Respondent No.1 to custodial interrogation, can hardly be fruitful to find out the prima facie substance in the allegations, which are of extreme serious in nature.”

Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail. Moreover, custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.

11. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.
12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

November 11, 2024
Ajay

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