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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 09.09.2024

Shashi Sham

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rohit Singh, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Haryana.
Mr. Shokeen Singh Verma, Advocate for the complainant.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 482 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'the BNSS')
for grant of anticipatory bail to the petitioner in case bearing FIR No.417
dated 25.07.2024, registered for the offences punishable under Sections
351(3), 75(2) & 78 of the Bharatiya Nyaya Sanhita, 2023 and under Section
12 of POCSO Act, 2012 at Police Station Sadar Bhiwani, District Bhiwani.
2. The case set up in the FIR in question (as set out in the petition
by the petitioner) is as follows:-

*"My name is Ankita d/o Balwan Singh, R/o Vill. Dinod. I am a student of
9th Class In Govt. Girls High School and my DOB is 02.09.2007. My
teacher whose name is Shashi Sham teaches us Hindi. Nearly 20 days ago,
he asked me to give my mobile number to him and he will send the school
work to me. I wrote my fathers mobile no. i.e. 9996199610 in his phone.
Thereafter, instead of sending me school work, he started sending indecent
messages and pictures from his number i.e. 9466581302. He said that I
should talk to him and started troubling me every day and started to
pressurize me to talk to him and started intimidating me. He threatened to
kill me and said that he will fail me in school and will also get me expelled*



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from school. He used to tell me in school to see the messages he sent and then delete them. One day he told me that he will stab himself and will slash his veins and he will defame in the school. Then one day he stabbed himself in the hand and sent me a photo and started saying that if I tell anyone at home then he will kill me and he started torturing me a lot. Thereafter, I narrated the whole thing to my family and then I wrote down my statement. I have written the statement in front of my aunt Pinki who is along with me and I have read it which is correct. It is correct that legal action may be taken against my teacher Shashi Sham and justice should be granted to me, so that he does not behave and do such wrong things with any other female student. SD-Ankita Pinki”

3. Learned counsel for the petitioner has argued that the petitioner is a school teacher (Hindi) by profession at Government Girls Senior Secondary School, Dinod, District Bhiwani and till date no complaint whatsoever has ever been received/made against him. Learned counsel further asserts that the petitioner has been falsely implicated in the present case at the behest of one Bablu and his wife Pinki, who are nursing a grudge against the petitioner and in a bid to extract revenge, the instant FIR has been registered. In order to harass and humiliate the petitioner, the complainant has concocted a fabricated story of sending the text messages and pictures through whatsapp, which fact is not corroborated by any evidence. Furthermore, the petitioner is not even the class teacher or the instructor of any subject of the complainant which casts a serious doubt on the story put forth by the complainant. It is next submitted by the learned counsel that no recovery is to be effected from the petitioner or at his instance and he is not required for the purpose of custodial interrogation and hence in these circumstances when the petitioner is ready to join the investigation, no useful purpose would be served by sending him behind the

bars. It is further submitted that the paramount consideration of bail are the



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availability of the petitioner to face trial, and in the instant case, there could be no such apprehension about the petitioner evading his trial as he has a fixed abode. It was lastly submitted that the petitioner, being a teacher, has deep roots in the society and, therefore, benefit of anticipatory bail be extended to him.

4. *Per contra; the* learned State counsel has opposed the grant of anticipatory bail to the petitioner by arguing that the offence committed by the petitioner is serious in nature. According to the learned State counsel, the petitioner was sending objectionable messages to the complainant and later deleted the same. Moreover, in order to elicit the truth, custodial interrogation of the petitioner would be necessary and hence dismissal of the anticipatory bail is prayed for.

5. Learned counsel appearing for the complainant has vociferously opposed the grant of anticipatory bail to the petitioner. Learned counsel has submitted that the petitioner apart from sending objectionable messages and pictures from his mobile phone, he is mounting pressure on the complainant to talk to him and issued threats in case she did not follow his instructions. 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.

6. I have heard counsel for the parties and have gone through the available records of the case.

7. 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) 1J.]”

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.”

8. As per the allegations put forth in the FIR in question, it is indubitable that serious allegations have been levelled against the petitioner. The victim is alleged to have levelled specific allegations of sending objectionable messages and pictures by the petitioner from his mobile phone. The petitioner, who is a teacher by profession, is also alleged to have threatened the complainant that she would be shunted out of the school in case she did not follow his instructions or narrated the same to anybody.



extend far beyond the individual, impacting both the child's mental development and society as a whole. Such an act of betrayal surely disrupts the child's psychological and emotional growth, leading to deep-rooted trauma trust issues, and long-term emotional scare. This exploitation destroys the child's faith in a relationship (i.e. teacher-student relationship) that is traditionally seen as sacred, replacing the sense of safety and respect with fear, confusion and shame. This breach of trust undermines the foundational role of educators as figures of integrity and guidance, eroding public confidence in the educational system and the moral values it upholds in the educational system. When a teacher exploits their position, it not only shatters the individual child's well-being but also weakens societal trust in institutions meant to be safe heavens for learning and growth.

8.1 It is befitting to mention here that the offence of such magnitude must be properly investigated and truth must be brought on record. Moreover, while considering a plea for grant of anticipatory bail, the Court has to equilibrate between safeguarding individual rights and protecting societal interest(s). 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 or the petitioner has been falsely implicated in the case. The nature and gravity of the offence, the role attributed to the petitioner essentially lead to unequivocal conclusion that the petitioner does not deserve the concession of anticipatory bail. It goes without saying that in the instant case, the victim has categorically stated that she was threatened by the petitioner, it is not



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appropriate to grant anticipatory bail, as it would necessarily cause impediment in effective investigation. The argument raised by the learned counsel for the petitioner that no recovery is to be effected from the petitioner-accused and hence he ought to be granted the benefit of anticipatory bail on this score alone, is a mis-placed argument especially, in light of the nature, severity and seriousness of allegations levelled against the petitioner. It would be apposite to refer herein to a judgment passed by Hon'ble Supreme Court titled as ***Sumitha Pradeep vs. Arun Kumar C.K. & anr., 2022 LiveLaw (SC) 870***; relevant whereof reads as under:-

“15. Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial



interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

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.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

September 09, 2024
Ajay

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