



In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-46733-2024 (O&M)
Date of Decision:-27.9.2024

Devender Kumar ... Petitioner
Versus
State of Haryana and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Neelam Chaudhary, Advocate and
Mr. Rajiv Kataria, Advocate for the petitioner.

Mr. Munish Sharma, DAG, Haryana.

Mr. Akash Vashisth, Standing Counsel for Union of India.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of transit anticipatory bail in respect of a case registered vide FIR No.337, dated 9.8.2024 at Police Station Gangoh, District Saharanpur (U.P.), under Section 137(2) of Bharatiya Nyaya Sanhita, 2023 (BNS).
2. The FIR was lodged at the instance of Mukul, wherein it is alleged that on 8.8.2024 at about 05:00 A.M., some unknown person had enticed away his sister Vanshi (Vanshika) aged about 13 years and that despite their efforts her whereabouts could not be traced.
3. Learned counsel for the petitioner submitted that the allegations as levelled in the FIR are absolutely false and concocted and that the true facts are that the



petitioner as well as complainant's sister Vanshi were earlier in a live-in relationship and have now solemnized marriage, though against the wishes of family of Vanshi. Learned counsel for the petitioner submitted that the petitioner and Vanshi (Vanshika) apprehending threat to their lives and liberty, were constrained to approach this Court by way of filing CRWP-8402-2024 (Annexure P-1), wherein a Coordinate Bench of this Court, vide order dated 3.9.2024, had directed the official respondents including Superintendent of Police concerned to consider the representation moved by the petitioner and Vanshi pertaining to their threat perception and to pass appropriate orders.

4. Learned counsel for the petitioner submitted that the petitioner is willing to approach the appropriate Courts in Uttar Pradesh (U.P.) with regard to FIR No.337, dated 9.8.2024 so as to seek appropriate relief and since he apprehends that he may be arrested while on the way to Uttar Pradesh, he may be granted transit anticipatory bail.
5. Pursuant to issuance of notice of motion to the respondent – State of Haryana as well as to the respondent - Union of India, Mr. Munish Sharma, DAG, Haryana has put in appearance on behalf of the respondent – State of Haryana and Mr. Akash Vashisth, Standing Counsel has put in appearance on behalf of the respondent - Union of India.
6. Learned counsel representing the respondent – State of Haryana as well as learned counsel representing the respondent - Union of India have submitted that having regard to the fact that age of complainant's sister Vanshi is yet to be verified, who may even ultimately turn out to be a minor, the allegations as levelled in the FIR would constitute an offence of kidnapping and, as such,



the petitioner does not deserve any kind of relief from this Court particularly when the FIR has been lodged in a different State.

7. This Court has considered rival submissions addressed before this Court.
8. Grant of anticipatory bail to an accused, who apprehends his arrest, is provided under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS), which reads as under:

“482. Direction for grant of bail to person apprehending arrest.

- (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.
- (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;(iii) a condition that the person shall not leave India without the previous permission of the Court;(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.
- (3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a



warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.”

9. A perusal of the aforesaid provisions would indicate that neither the term ‘anticipatory bail’ has been used therein nor the term ‘transit bail’ is used therein or in any other section. It goes without saying that the person, against whom FIR is lodged, would be required to approach either the District Court within whose jurisdiction the police station, where the FIR is lodged, is situated or the Hon’ble High Court of the State within which such district is situated.
10. However, there would be certain cases where a person is a resident of a particular State, but the FIR is lodged against him in a different State, which some times may even be far away. While the police would be able to arrest a person who reside in another State having resort to appropriate course under Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) by taking warrants and by informing the local police, the accused, under such circumstances, cannot be left remediless. The petitioner is a resident of State of Haryana as is also evident from his Aadhar Card, wherein his address has been mentioned as under:

“Devender Kumar son of Rejender Singh, Karora, P.O. Karora, District Kaithal, Haryana – 136043.”



11. The FIR in question has been lodged against the petitioner in the State of Uttar Pradesh. The petitioner apparently is not any gangster operating inter-state, but stands involved in the FIR on account of his love affair with a girl. Under these circumstances, the petitioner can be extended some kind of interim protection. Hon'ble the Supreme Court in a recent judgment reported as 2024(4) SCC 749 titled Priya Indoria Vs. State of Karnataka and others observed as under:

“44. Further, on a reading of section 438 of CrPC, 1973 we do not find that the expression "the High Court" or "the Court of Session" is restricted vis-a-vis the local limits or any particular territorial jurisdiction. However, this does not mean that if an FIR is lodged in one State then the accused can approach the Court in another State for seeking anticipatory bail. He can do so, if at the time of lodging of the FIR in any State, he is residing or is present there for a legitimate purpose in any other State. In fact, on a reading of section 438 of CrPC, 1973 it does not emerge that the expression "the High Court" or "the Court of Session" must have reference only to the place or territorial jurisdiction within which the FIR is lodged. If that was the implication, the same would have been expressly evident in the Section itself or by a necessary implication. Further use of the word "the" before the words "High Court" and "Court of Session" also does not mean that only the High Court or the Court of Session, as the case may be, within whose jurisdiction the FIR is filed, is competent to exercise jurisdiction for the grant of transit anticipatory bail.

45. At the same time, we are also mindful of the fact that the accused cannot seek full-fledged anticipatory bail in a State where he is a resident when the FIR has been registered in a different State. However, in view of what we have discussed above, he would be entitled to seek a transit anticipatory bail from the Court of Session or High Court in the State where he is a resident which necessarily has to be of a limited duration so as to seek regular anticipatory bail from the



Court of competent jurisdiction. The need for such a provision is to secure the liberty of the individual concerned. Since anticipatory bail as well as transit anticipatory bail are intrinsically linked to personal liberty under Article 21 of the Constitution of India and since we have extended the concept of access to justice to such a situation and bearing in mind Article 14 thereof it would be necessary to give a constitutional imprimatur to the evolving provision of transit anticipatory bail. Otherwise, in a deserving case, there is likelihood of denial of personal liberty as well as access to justice for, by the time the person concerned approaches the Court of competent jurisdiction to seek anticipatory bail, it may well be too late as he may be arrested. Needless to say, the Court granting transit anticipatory bail would obviously examine the degree and seriousness of the apprehension expressed by the person who seeks transit anticipatory bail; while the object underlying exercise of such jurisdiction is to thwart arbitrary police action and to protect personal liberty besides providing immediate access to justice though within a limited conspectus.”

12. Having regard to the facts and circumstances of the case and also while bearing in mind the ratio of Priya Indoria's case, this Court is of the opinion that the instant petition merits acceptance. The instant petition, as such, is accepted. The petitioner is granted transit anticipatory bail for a period of two weeks from today so as to enable him to approach the appropriate Courts in Uttar Pradesh connection with FIR No.337, dated 9.8.2024 at Police Station Gangoh, District Saharanpur (U.P.), under Section 137(2) of Bharatiya Nyaya Sanhita, 2023 (BNS).
13. The petitioner, in the event of his arrest, in connection with FIR No.337, dated 9.8.2024 be released on bail for a period of not exceeding 2 weeks from today subject to his furnishing personal bonds in the sum of Rs.50,000/- to the satisfaction of Arresting/Investigating Officer. Needless to mention, the



CRM-M-46733-2024 (O&M) (7)

petitioner would be at liberty to approach the Court concerned at Saharanpur of the Hon’ble High Court of Uttar Pradesh for seeking appropriate relief.

14. The instant petition stands disposed off accordingly.

27.9.2024
Pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No