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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 12.11.2024

Jaggi @ Jagjit Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manvender S. Chauhan, Advocate for the petitioner.

Mr. Anup Singh AAG Punjab.

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 pre-arrest/anticipatory bail to the petitioner in case bearing FIR No.96 dated 02.12.2023, registered for the offences punishable under Sections 323, 354 and 34 of the IPC, 1860 at Police Station Sadar Phagwara, District Kapurthala, Punjab.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:

“Statement of Saraj Ali son of Jabardin, resident of Village Chaheru, PS Sadar Phagwara, aged about 35 years M. No. 9872830493, stated that I am resident of above said address and I am doing work of selling milk and we are keeping cattle, which me and my family used herding. On 13.11.2023 at about 12-1 PM, my daughter herding cattle near Majrina Bei and I was gathering stubble nearby, and at little distance, Nikku, Biru son of Chand Kishore, resident of Mehta along with Dodu son of not known, Rakesh son of not known, Sharif son of Not Known, who were working near Lovely University and 3-4 unknown boys were cutting woods from Kikar trees and were singing songs in their language. My daughter moved her cattles ahead, and while turning her face in opposite directions sit at little ahead.



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Then all of the boys caught hold my daughter with bad intentions and torn her clothes and molested her. My daughter made hue and cry, and I came there as I heard her voice and I stop Niku and Biru at spot and I made call on helpline number 100 regarding this occurrence few day back, Davinder son of Makhan, Jaggi son of Suchu and their two friends had teased my daughter, regarding that she told me later on and regarding this subject, I had also filed complaint on 07.07.2023. That the entire incident was done by all of them with planning. We were gathered in police station for compromise but the same did not come at end. Today I submitted MLR of my daughter Majrina and statement is recorded. Appropriate legal action be taken and justice be provided to me. I have heard the Statement, it is correct. Sd/- Saraj Ali.”

3. Learned counsel for the petitioner has iterated that from the plain reading of the FIR, it is crystal clear that totally a false and fabricated FIR has been registered by the complainant. Learned counsel has further iterated that the FIR was lodged with a false narrative and afterthought as there is an inordinate and unexplained delay of 20 days in lodging the FIR. Learned counsel further asserts that the petitioner has been falsely implicated in the present case as the petitioner was not present at the location of the alleged incident and the complainant mentioned the name of the petitioner out of malice and ulterior motives. According to the learned counsel, a few days prior to the lodging of the FIR, the petitioner had requested the complainant to address an issue caused by the negligence of the complainant. The complainant had overloaded his trolley with stubble, and in an attempt to pass it under the electric wires, disconnected the motor pump of the petitioner from the transformer. This negligence led to the stubble catching fire from the electric wires and when the petitioner asked the complainant to repair the damage, he got annoyed and falsely implicated the petitioner in the instant case. Learned counsel asserts that the petitioner has a clean antecedent with no prior accusations. Furthermore, learned



counsel submits that by naming the petitioner in the FIR in question, the complainant wanted to settle personal score. 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 is the 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 is lastly submitted that the petitioner, without any substantial piece of evidence on record against him, be extended the benefit of anticipatory bail.

4. *Per contra*, 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, earlier also petitioner alongwith two other companions has harassed the daughter of the complainant regarding which a complaint dated 07.07.2023 has been given. A status report dated 11.10.2024 was filed by the State, relevant whereof reads as under:

“4. That complainant further stated that his daughter moved her cattles ahead, turned her face to the opposite direction to the boys. All the aforesaid person caught hold of his daughter with a malafide intention, tore her clothes and molested her. He called the police by making call at 100 number. Earlier also Davinder, Jaggi and their two other companions have eve teased his daughter. In regard he moved mo complainant 07.07.2023. The aforesaid persons connived with each other to commit the said occurrence and as such the complainant requested to take legal action against them.”



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

6. 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.”

7. As per the allegations put forth in the FIR in question, it is indubitable that serious allegations have been levelled against the petitioner. The FIR in question was lodged on a statement made by the complainant



Saraj Ali, who alleged that on 13.11.2023 at about 12:00/1:00 pm, his daughter was tethering cattle while he was nearby, gathering weeds of rice plants. At the same time, Nikku, Beeru, Dhodu, Rakesh and Sharif alongwith three or four other boys were cutting wood from the kikar trees and singing songs in their language. In an attempt to avoid their attention, the daughter of the complainant moved her cattle further and turned away from the group. However, all the accused individuals allegedly approached her with malicious intent, grabbed her, torn her clothes and molested her. Stand of the State before this Court is that earlier also the petitioner alongwith other co-accused had harassed and eve teased the daughter of the complainant. The petitioner along with co-accused is alleged to have stalked the victim, followed her persistently and also attempted to molest and assault her. It is befitting to mention here that 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 as also the deeper and wide impact of such alleged iniquities on the society. It is imperative that every person in the Society can expect an atmosphere free from foreboding & fear of any transgression. At this stage, there is no material on record to hold that *prima facie* case is not made out against the petitioner. It goes without saying that in the instant case, the victim has categorically stated that she was molested and assaulted by the petitioner and co-accused. Thus, it is not appropriate to grant anticipatory bail to the petitioner, as it would necessarily cause impediment in effective investigation.



7.1. 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.

8. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

November 12, 2024
Ajay

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