



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

219

**CRM-M No.49776 of 2024
Date of decision : 20.11.2024**

Inderjeet Singh**Petitioner**

Versus

State of Haryana and another**Respondents**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. S.S. Gill, Advocate, for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

Ms. Neha Bindal, Advocate, for the complainant

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita of 2023 in case FIR No.247 dated 11.8.2024, under Sections 137 (2), 3(5) and 96 of BNS of 2023 (Section 64(2)(M), 70(2) of BNS and Section 6 of POCSO Act, 2012 were added later on), registered at Police Station Kalanwali, Dabwali, District Sirsa.

2. On 15.10.2024, the following order was passed:-

'Apprehending his arrest in FIR No.247 dated 11.8.2024, under Sections 137 (2), 3(5) and 96 of the Bharatiya Nyaya Sanhita, 2023 (Sections 64(2)(M), 70(2) of the BNS) and Section 6 of POCSO Act, 2012 added later on), registered at Police Station Kalanwali, District Dabawali (Sirsa); the petitioner has preferred this petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, seeking pre-arrest bail.

Pursuant to notice of motion issued, Ms. Neha Bindal, Advocate, has entered appearance on behalf of respondent no.2 and has



filed her vakalatnama. The same be kept on record.

*Inter alia contends that the anticipatory bail of the petitioner is maintainable in terms of the dicta of this Court in **CRM-M No.36185 of 2024** titled as **Mukesh Kumar v. State of Haryana**, decided on 30.8.2024, 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.

The only allegation against the petitioner alleges that the car of the petitioner used by the main accused, namely Amrit Pal, for committing the offence, the petitioner was roped in on account of misunderstanding, which has since been cleared and a compromise in this regard has been effected vide compromise deed dated 4.10.2024, and no recovery is to be effected. The petitioner is willing to join investigation and cooperate therein in accordance with law

Adjourned to 20.11.2024.

The petitioner is directed to appear before the Investigating Officer on 19.10.2024 at 11:00 A.M. in concerned Police Station and join investigation. In the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal/surety bond(s) to the satisfaction of the Arresting Officer/Investigating Officer. As and when further called by Investigating Officer, the petitioner shall join the investigation. He shall abide by the condition(s) enumerated under Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023.’

3. Learned State counsel (on instructions) submits that pursuant to the order dated 15.10.2024, the petitioner has joined investigation and is no longer required for custodial interrogation.

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

5. Keeping in view the entirety of the facts and circumstances of



the case, especially the factum that the petitioner has joined the investigation and not required for custodial interrogation; the interim order dated 15.10.2024, passed by this Court is made absolute, subject to the conditions as enumerated under Section 482 (2) of BNSS.

6. This order should not be treated as “blanket” order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

7. Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 482 (2) of BNSS, or upon showing any other sufficient cause.

8. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

20.11.2024
Ashwani

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