



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-59232-2024

Date of decision: 28.11.2024

Gulam Husain @ Gama @ Gagan

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Komal Preet Kaur, Advocate for the petitioner.

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.87
dated 24.08.2024, registered for the offences punishable under Sections
332(c), 76 of BNS and Section 12 of POCSO Act at Police Station Ramdas,
District Amritsar.

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

*“Stated that I am resident of aforesaid address and doing work of laborer.
That I have three children, one daughter and two sons. My daughter
namely Kirandeep Kaur who is about 17 years of age who was alone at
home and we all family members went for labor work and it was around
11.30 and after seeing my daughter Kirandeep Kaur alone at home Gama
son of Yusuf Ali resident of village Thoba entered my house and outrage
the modesty of my daughter, when she raised hue and cry then Gama ran
away from my house. Today I am coming to you for giving information,
but you met here, statements recorded, heard, Correct, Complainant.
Signed Satnam Singh.”*



3. At the very outset, learned counsel for the petitioner has iterated that the petitioner has been falsely implicated into the FIR in question as he was not even present at the spot of the alleged incident. It has been further iterated that the implication of the petitioner is a result of political pressure exerted by the complainant party, and no evidence substantiating the allegations against the petitioner has been brought forth. Learned counsel has highlighted that the father of the petitioner namely Yusuf Ali, filed a complaint dated 29.02.2024 before the Executive Officer (EO), Amritsar, against a Molvi namely Shekhwai of village Thoba, alleging illegal activities being carried out by the said Molvi in the Masjid, which are against the principles of Islam. Additionally, the father of the petitioner has also lodged another complaint against the said Molvi on 23.07.2024 with the Punjab Wakf Board, Jalandhar, the Deputy Commissioner of Amritsar etc. These complaints caused severe animosity between the Molvi and the petitioner's family thereby giving rise to inimical relations. According to learned counsel, the involvement of the petitioner in the instant case appears to be a consequence of his father's actions and has been orchestrated under political influence exerted by the complainant at the behest of the Molvi. Hence, the instant FIR has been registered as a counterblast to the complaints filed by the father of the petitioner and appears to be lacked any substantive or credible basis. 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 and thus, the benefit of anticipatory bail be extended to the petitioner.

4. I have heard counsel for the petitioner and have gone through the available records of the case.

5. 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.”

6. As per the allegations put forth in the FIR in question, it is indubitable that serious allegations have been levelled against the petitioner. It appears that the present case has been registered against the petitioner based on the statement of the complainant namely Satnam Singh. He alleged that on 24.08.2024, at approximately 11:00 A.M., while his minor daughter (victim), was alone at home, the petitioner unlawfully entered their residence and outraged her modesty. Upon hearing the cries of the victim for help, the petitioner fled from the scene of occurrence. The record demonstrates that the victim, in her statement recorded under Section 164 of Cr.P.C., 1973 has made serious and specific allegations against the petitioner, including outraging her modesty and tearing her clothes. Furthermore, the victim, as per her matriculation certificate produced before the Court below, is stated to be minor, thereby attracting the provisions of the POCSO Act.

6.1. The statement recorded under Section 164 of Cr.P.C., being a material piece of evidence, holds significant evidentiary value. Furthermore, any attempts to interfere with the investigation or to intimidate the victim must be prevented to ensure the fair and expeditious administration of justice. The Court must also be guided by the legislative intent behind the



offences and mandates that all judicial and investigative processes prioritize the child's welfare and dignity. A fair trial is essential, but the right of the victim must not be undermined in the pursuit of procedural safeguard.

7. 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 made explicit and unequivocal allegations against the petitioner, asserting that he has outraged her modesty by tearing her clothes. Granting anticipatory bail in such circumstances would not only undermine the gravity of the alleged offence but also hinder the effective and uninhibited progress of the 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,



investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.

8. 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.
9. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

November 28, 2024
Ajay

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