

214 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-64503-2023
Date of decision: 5th February, 2024

Salman and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Lajpat Rai Sharma, Advocate for the petitioners.
Mr. Parneet Singh Pandher, AAG, Punjab.
Mr. Amandeep Chhabra, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
71	21.07.2022	Bhikhiwind, District Tarn Taran	363, 366, 366-A and later on added Section 376 of Indian Penal Code, 1860 and Section 4 of POCSO Act

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant ‘S’ (name withheld) on 21.07.2022 alleging therein that his daughter ‘P’ (name withheld) aged about 16-17 years had been found missing in the morning of 18/19.07.2022. He had

made search for her but could not find her. He alleged that the petitioner No.1 who is their relative and already married, used to visit his house and was keeping an evil eye on his daughter. He further alleged that in this regard, complaint was already made to family members of petitioner No.1 and objections had been raised. He raised suspicion that his daughter had been enticed away by the petitioner. After registration of FIR, investigation proceedings were initiated. The prosecutrix was recovered on 22.07.2022. Her statement under Section 164 of Cr.P.C. was recorded on 02.08.2022 by Judicial Magistrate Ist Class, Patti wherein she alleged that petitioner No.1 had enticed her away on pretext of marrying her at Jalandhar and by representing that he would transfer a house in her name. She alleged that after reaching Jalandhar, she was taken to a house where 4-5 friends of petitioner No.1 were already present. Petitioner No.1 had tried to commit forcible act with her. She further alleged that on the next day, petitioners NO. 2 and 3, who are parents of petitioner No.1 had reached there and took her to different saints and also to different villages. She also alleged that her uncle Bobby and maternal uncle of petitioner No.1 accompanied them and on 22.07.2022, they had called the maternal uncle of her father who had taken her custody from the petitioners. She also alleged that petitioner No.1 had committed forcible act with her. Offences under Section 376 of IPC and Section 4 of POCSO Act were added. Investigation is going on. The petitioners had filed application for grant of anticipatory bail before the Court of learned ASJ on 22.02.2023, but the same were dismissed.

3. The present petition has been jointly filed by the petitioners and

it is argued by their counsel that they have been falsely implicated in this case. The petitioners No. 2 and 3 had nothing to do with the matter. They have been living separately from petitioner No.1 in some other house. The respondent No.2 i.e. victim had left her house at her own as her parents wanted to solemnize her marriage forcibly against her wishes with some other boy. She had come to petitioner No.1. Apprehending danger to their lives and liberty, the petitioner No.1 and respondent No.2 had filed a petition before Co-ordinate Bench which was decided on 22.02.2023. In fact the petitioner No.1 and respondent No.2 were happily staying in a live-in-relationship. Now the respondent No.2 even attained the age of majority and had sworn an affidavit (Annexure P-4) to the effect that she had left her father's house at her own will. The petitioners are ready to join investigation. Their custodial interrogation is not required neither. It has been urged that the petition deserves to be allowed.

4. On the other hand, the respondent-State has filed status report, by refuting the submissions as made in the petition and by alleging that there were serious and specific allegations against the petitioners. It is argued by learned State counsel that the Petitioners No. 2 and 3 were nominated on the basis of statement of the prosecutrix. The petitioners have committed a heinous crime and their custodial interrogation is required. Therefore, it has been urged that they do not deserve to be given concession of anticipatory bail. Learned counsel for respondent No.2 has submitted that since the victim had performed marriage with petitioner No.1 and living with him, hence, she has no objection if the application is allowed.

5. I have heard learned counsel for the parties and have gone through the record carefully.

6. As per the allegations, petitioner No.1 had enticed away the prosecutrix in the intervening night of 18/19.07.2022, who was minor at that time on the pretext of marrying her and had taken her to Jalandhar wherein she was kept in a house. As per the further allegations, he had tried to do bad act with her. So far as the petitioners No. 2 and 3, parents of petitioner No.1 are concerned, the allegations against them are that next day after the victim had been taken to Jalandhar, they had reached there and had then taken her to some Babas and several other places and then on 22.07.2022 they had given information about her to her father and her maternal uncle had taken her back. It is neither alleged in the FIR nor from the statement of the prosecutrix recorded under Section 164 of Cr.P.C., it is revealed that she was enticed away and taken out from the guardianship of her parents by the petitioner No.1 in connivance with petitioners No.2 and 3 and they were amongst the persons who had induced her to marry with petitioner No.1 or had facilitated, intentionally aided or instigated the petitioner No.1 to ravish her or further that the petitioner No.1 had committed rape upon her in their presence, with their connivance or any intentional aid being given by them. No doubt as per the statement of the prosecutrix, on 20.07.2022, petitioners No. 2 and 3 had gone to the place where she was kept by petitioner No.1 and then she was taken to some places, however, from these allegations, *prima facie*, no case for commission of offences punishable under Sections 363, 366, 366-A and 376 of the IPC or Section 4 of POCSO Act can be stated to

have been made out as against petitioners No. 2 and 3, nor it is made out that they had abetted the commission of either of the aforementioned offences. Rather, as stated by her, it were petitioners No. 2 and 3 who had informed her family to take her back. In these circumstances, in my considered opinion, the custodial interrogation of petitioners No. 2 and 3 is not required and no useful purpose would be served by detaining them in custody. With these observations, **I allow the prayer as made by petitioners No. 2 and 3 for grant of pre-arrest bail.** It is ordered accordingly and they are ordered to be admitted to anticipatory bail subject to their surrendering before the Investigating Officer within a period of one week and joining the investigation within that period and even subsequently as and when required till the conclusion of the investigation and subject to furnishing personal/surety bonds to the satisfaction of the Illaqa Magistrate and further subject to compliance of other provisions of Section 438(2) of Cr.P.C.

7. However, so far as petitioner No.1 is concerned there are serious and specific allegations against him qua not only of enticing away a minor girl on the pretext of performing marriage with her but also of ravishing her. Even if it is assumed that the sake of arguments that the victim had voluntarily gone with him, still, she being a minor her consent is of no value. The fact that the affidavit (Annexure P-4) had been sworn by respondent No.2 but the admissibility thereof, is a question to be decided by learned trial Court on the basis of evidence to be provided before it. It is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised sparingly and in exceptional cases. The pre-arrest bail should not

be granted likely and in a routine manner. It is also to be kept in mind that an order of anticipatory bail should not operate as an inroad in the normal legal procedure of criminal cases by the trial Court. In my considered opinion, thorough investigation is required in the matter and no such sparing or extraordinary circumstance is made out which warrants grant extending benefit of pre-arrest bail to petitioner No.1-Salman. Accordingly, the petition is dismissed qua petitioner No.1-Salman.

8. Needless to mention that nothing observed, hereinabove, would reflect, on the merits of the case, in any manner as the same has been recorded for the limited purpose of deciding the present petition for anticipatory bail.

[MANISHA BATRA]
JUDGE

5th February, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No