

2025:PHHC:013588



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

Sr. No.274**CRM-M-2616-2025 (O&M)****Date of decision : 29.01.2025**

Mustafa @ Mustfa

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Inderjeet Singh, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

1. Apprehending arrest in FIR No.982 dated 12.10.2024, under Section 75(2) of BNSS, 2023, registered at Police Station City Yamuna Nagar, District Yamuna Nagar, the petitioner has preferred this petition under Section 482 BNSS, 2023 for grant of pre-arrest bail.

2. The translated version of the FIR is reproduced below:-

'To, SHO Sahib, Police Station City Yamunanagar, Sir, the request is that I, Babita wife of Deepak, resident of 248 Shivpuri B, have gallstones due to which I was admitted to Gaba Hospital on 11-10-2024 due to pain. At night, I was admitted to the ICU, it was around 3 o'clock and I was not able to sleep, then Mustafa, the male staff, said that Madam, I will give you a sleeping injection. Then Mustafa instead of giving injection brought some gel type thing and he told me to lift my shirt and he started massaging the gel on my waist and started touching me inappropriately. At that time all the patients and staff of ICU were sleeping. I pushed Mustafa back with my hand, then I started feeling scared and I spent the whole night in pain due to fear, when my husband came to meet me in the morning at around 11.00 am, I told the whole thing to my husband and my husband told the hospital administration, now my health is fine, I have written an application and presented it to you. Appropriate action should be taken on my application.'

2025:PHHC:013588



3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. It is highly improbable that in the presence of a doctor, nursing staff and female helper, the petitioner would do such act and the complainant would not make any complaint to anyone in the room including doctor present in the room.

4. *Per contra*, learned State counsel has opposed the petition. While placing reliance upon the status report, he submits that during course of investigation, on 02.12.2024, case summary of victim was obtained from Gaba Hospital, Yamuna Nagar. On 11.12.2024, notice was issued under Section 94 BNSS to the hospital to supply record of employees who were on duty on the intervening night of 11/12.10.2024 in ICU-55 from 8:00 PM to 8:00 AM; and to supply the detail of the patients who were admitted in the hospital. In response to the aforesaid notice, CEO of Gaba Hospital, Yamuna Nagar informed the investigating officer that 11 patients were admitted at that point of time and that CCTV footage is not available for the concerned period. He also supplied the list of the employees who were on duty. The list of patients reveals that respondent no. 2 remained admitted there from 11.10.2024 to 12.10.2024 and the petitioner was on duty at that time. He further submits that during the course of investigation statement of Ms. Pratibha, CEO of Gaba Hospital, Yamuna Nagar was recorded, who stated that after the incident the hospital has terminated the services of the petitioner; and also informed that as per NABH Accreditation, a camera could not be installed in ICU. The investigation conducted so far reveals the presence of the petitioner and victim at the alleged time of incident; and that on pretext of administering sleep inducing injection, the petitioner started

2025:PHHC:013588



rubbing a gel on the back of the victim and touched her inappropriately and even tried to touch/rub abdomen of the complainant.

5. Heard the rival submissions made by learned counsel for the parties.

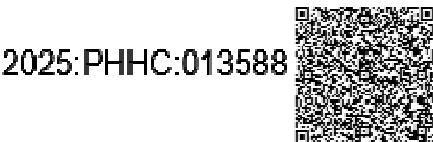
6. In **Srikant Upadhyay and others vs. State of Bihar and another, 2024 (INSC) 202 (SC)**, Hon'ble Supreme Court held as under:

“It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr.P.C. is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J. Mannan & Anr. 2010 (1) SCC 679).

*Further, it was clearly observed in para NO. 24 of the judgment (supra) that “**though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule.** It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”*

7. In **Sushila Aggarwal v. State (NCT of Delhi) (2018) 7**

SCC 731, the Constitution Bench reaffirmed that when considering



applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

8. In **Siddharam Satlingappa Mhetra v. State of Maharashtra & Ors. reported in (2011) 1 SCC 694** rendered in the context of the discretion to grant Anticipatory Bail under Section 438, Hon’ble Supreme Court advocated the need to balance individual personal liberty with societal interest and observed:-

“84. Just as liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order. Both are equally important.”

9. There are serious allegations levelled against the petitioner. The petitioner was deputed as male nursing staff in Gaba Hospital, Yamuna Nagar and on pretext of administering medicine, he molested a female patient admitted in hospital. Accordingly, to unearth the true dimension of the alleged crime, this Court does not deem it appropriate to interfere in the matter so as to grant the concession of anticipatory bail to the petitioner at this stage.

10. The petition is dismissed.

11. Needless to mention that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

12. Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

29.01.2025
Ramandeep Singh

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