

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

**CRM-M-13504-2022  
Date of decision : 31.03.2022**

**Surender Kataria** .....Petitioner

**versus**

**State of Haryana and another** ..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

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Present :- Mr. S.S. Virk, Advocate  
for the petitioner.

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**RAJESH BHARDWAJ, J. (Oral)**

Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.0479 dated 23.10.2021, under Sections 3, 4 and 5 of The Immoral Traffic (Prevention) Act, 1956 and Sections 120-B, 323, 376(2)(n), 376(2)(f), 376-D, 377, 506 of IPC, registered at Police Station Industrial Sector-29, Panipat, District Panipat.

As per the facts of the case, the present FIR was lodged by the prosecutrix (name concealed) aged 13 years on the basis of the allegations of immoral trafficking against the petitioner. The petitioner along with the co-accused used the prosecutrix for blackmailing the senior citizens by falsely implicating them in rape cases. The prosecutrix was allegedly raped repeatedly by the petitioner and the co-accused. The FIR was lodged to take the legal action against the culprits. On the commencement of the investigation, apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge (Fast Track Court), Panipat, however, after hearing counsel for the parties, the prayer was declined by the learned Additional Sessions Judge (Fast Track

Court), Panipat vide order dated 25.03.2022. Aggrieved by the same, petitioner has approached this Court praying for the grant of anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. The main thrust of the arguments raised by counsel for the petitioner is that the prosecutrix has given affidavit dated 17<sup>th</sup> March, 2022 wherein, she has deposed that Surender Kataria has never done any wrong act with her. Thus, it is clear that the petitioner has been falsely implicated in the FIR. He submits that in view of the above, petitioner be granted anticipatory bail.

I have heard counsel for the petitioner and perused the records.

From the perusal of the allegations in the FIR and the other relevant record, it is apparent that the prosecutrix has levelled serious and sensitive allegations against the accused including the petitioner and investigation is still pending. The affidavit relied upon by the petitioner further aggravates the seriousness of the allegations and the probabilities of scuttling the investigation by the petitioner.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

*“Direction for grant of bail to person apprehending arrest:-*

*(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to*

*whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,*

*Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”*

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

*31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail.*

*The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *The State v. Captain Jagjit Singh*, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

The Hon'ble Supreme Court *in State Vs. Anil Sharma, (1997)*

7SCC 187, held as under:-

6. *We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable 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.*

Examining the facts and circumstances of the present case, in the light of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the petitioner fails to qualify for exercising its jurisdiction under Section 438 Cr.P.C.

Petition, being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

( RAJESH BHARDWAJ )

31.03.2022

JUDGE

*m. sharma*

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