IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3499-2021 (O&M)
Reserved on: *November 15, 2022*

Date of Decision: *December 01, 2022*

Sanjay Patel ... *Petitioner*

Versus

State of Haryana and another ... *Respondents*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Dharmender Kumar Mishra, Advocate,
and Mr. M.Z. Ali, Advocate,
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

Mr. Aman Arora, Advocate,
for respondent No.2.

Vivek Puri, J.

The petitioner is seeking cancellation of anticipatory bail granted to respondent no.2 in terms of order dated 23.12.2020 passed by the Court of learned Additional Sessions Judge, Gurugram, in the case bearing FIR No. 147, dated 19.03.2015, under Sections 469, 471, 120-B of the Indian Penal Code (for short `IPC'), Section 67-B of the Information Technology Act and Sections 13(c), 14(1), 23 of the Protection of Children from Sexual Offences Act (for short `the Act'), registered at Police Station Palam Vihar, Gurugram.

Briefly, the FIR has been registered on the allegations that on 02.07.2013, a religious Guru Asaram Bapu had visited the residence of the petitioner-complainant. The petitioner along with his wife and others were present at the spot. The religious Guru blessed all of them including the victim, who is stated to be aged about 10 years and niece of the petitioner. The videography was also conducted at that point of time. The video was telecasted on India News TV Channel by tampering and distorting the same. The victim child was shown in a vulgar manner on the television. The religious Guru was shown inappropriately touching the body of the victim in a vulgar manner. The wife of the petitioner was shown to be involved in immoral trafficking of girls and the children by depicting her to be some other lady by the name of Shilpi.

The respondent no.2 approached the Court of learned Additional Sessions Judge and has been granted anticipatory bail in terms of the order dated 23.12.2020.

Assailing the impugned order, the learned counsel for the petitioner has argued that the Special Court cannot deal with the application for anticipatory bail under Section 438 of the Code of Criminal Procedure (for short `Cr.P.C.'). The guidelines for not automatically arresting a person rendered in ***Arnesh Kumar vs. State of Bihar and another, 2014(3) R.C.R. (Criminal) 527,*** are not applicable

as the penal provisions of Section 14(4) of the Act are attracted in the instant case and the said offence is punishable with imprisonment which may extend to eight years. It has been further argued that the powers under Section 438 Cr.P.C. are extra ordinary in nature and the same is not to be exercised lightly. In the instant case, no extra ordinary circumstances are made out to extend the concession of pre-arrest bail to the petitioner.

While supporting the impugned order, the learned counsel for respondent no.2 has argued that there is no bar under the Act for invoking the provisions of Section 438 Cr.P.C. The Court of Session is empowered to grant anticipatory bail by exercising the powers under Section 438 Cr.P.C. The respondent no.2 could not have been arrested by the police authorities without issuance of notice under Section 41(1) Cr.P.C. on account of guidelines issued in ***Arnesh Kumar's*** case (supra). The respondent no.2 is working as a news editor in News 24 Channel, he has cooperated during the course of investigation, the investigation qua him is complete and challan has already been presented. There is nothing to indicate that the respondent no.2 had threatened, pressurized or tried to influence the petitioner or his family member in any manner. The provisions of the Act have been amended in the year 2019, the occurrence in the instant case pertains to the

year 2013, the FIR has been registered in the year 2015 and the provisions of unamended Act will govern the matter. The offence attributed to the respondent no.2 pertains to Section 13(c) of the Act which is punishable under Section 14(1) of the Act for an imprisonment upto five years and for the subsequent conviction with imprisonment upto seven years. There is nothing to suggest that the respondent no.2 is a previous convict. The Court below has passed the impugned order extending the concession of pre-arrest bail to the respondent no.2 after proper appreciation and evaluation of the entire facts and circumstances in proper prospective and no ground is made out to interfere with the same.

Learned State counsel has submitted that at the earlier instance, the challan was presented against the respondent no.2 and six other persons. Subsequently, a supplementary challan has also been presented in the instant case.

It may be mentioned here that the power of cancellation of bail has to be exercised with care and circumspection. The cancellation of bail has to be resorted only in case of patent perversity. The bail can be cancelled in the event there is an interference in the due course of justice, hampering investigation, abusing the freedom granted by the Court, intimidation of the witnesses etc. Such reasons for cancellation of bail can only be termed to

be illustrative and not exhaustive. It is left to the sound judicial discretion of the Court and the bail is required to be cancelled in the event compelling circumstances are made out for such an indulgence. The rejection of bail in a non-bailable case and the cancellation of bail so granted have to be dealt with and considered on the basis of separate yard sticks. The bail already granted can be cancelled in the event there are cogent and overwhelming circumstances to do so. The bail can be cancelled in the event the same has been granted illegally or improperly by erroneous and arbitrary exercise of the discretion. Very cogent and overwhelming grounds/circumstances are required to cancel the bail already granted.

In ***Criminal Appeal No. 1972 of 2022*** titled as "***Bhuri Bai vs. The State of Madhya Pradesh",*** decided on ***11.11.2022,*** it has been laid down as following:-

> *"19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC.*
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> *20. It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the*

> *conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail."*

Section 438 Cr.P.C. vests the power upon the Court of Session to release a person on bail in the event he has reason to believe that he may be arrested on an accusation of having committed non-bailable offences. Section 28 of the Act provides as following:-

> *"**28. Designation of Special Courts** – (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:*

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under Section 67-B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online."

The aforesaid provision provides for constitution of Special Courts for the purpose of the speedy trial of the offence under the Act. It does not in any manner restrict or curtail the power of the Court of Session for grant of anticipatory bail as per the provisions of Section 438 Cr.P.C. The claim of an accused for anticipatory bail is to be adjudicated on the touchstone of the factors as specified under Section 438 Cr.P.C. by the High Court or the Court of Session. It cannot be said that as Special Court has been designated for the purpose of trial of the offence under the

Act, the Court of Session is not competent to deal with the claim of an accused for anticipatory bail under Section 438 Cr.P.C.

The contention of the learned counsel for the petitioner is to the effect that the offence falls under Section 14(4) of the Act is also not tenable. There is nothing to indicate that any allegation with regard to the commission of offence under Section 7 of the Act has been attributed against the respondent no.2. The allegation against the respondent no.2 is only to the effect that there is indecent / obscene representation of the child during the telecast in the news channel wherein he was news editor. Consequently, the offence falls under Section 14(1) of the Act which provides as following:-

> *"**14. Punishment for using child for pornographic purposes** – (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine."*

The offence is punishable for an imprisonment upto five years. As such, the respondent no.2 is entitled to the benefit of the guidelines laid down in ***Arnesh Kumar's case*** (supra).

It shall not be out of place to mention that even in the petition, the plea of the petitioner is to the effect that there are allegations with regard to the commission of offence under Section 13(c) of the Act by repeated telecasting of tampered video in a vulgar manner where the minimum punishment is imprisonment for five years and minimum sentence is seven years for the repeated offender.

In this regard, it may be mentioned here that Section 14 of the Act has been amended in the year 2019 which prescribes for minimum punishment. In the instant case, the occurrence took place in the year 2013 and during that period of time, the offence under Section 14(1) of the Act did not provide for any such minimum punishment. Article 20 of the Constitution of India provides the safeguard to the effect that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. Consequently, the amendment in the year 2019 cannot be given retrospective effect.

The detention of a person during the course of investigation or trial cannot be justified as a punitive measure particularly in the facts and circumstances of the instant case. The investigation of the case is complete, the challan has been presented and the respondent no.2 is stated to be regularly appearing in the trial Court. There is

nothing to indicate that the respondent no.2 has exercised any threat, pressure or influence upon the petitioner or his family members. The learned Court below has granted the anticipatory bail to the respondent no.2 by making the following observations:-

> *"7. From the facts narrated above, it is made out that the petitioner has already joined the investigation and his liberty was not curtailed in view of the directions issued by the Hon'ble Supreme Court of India in Arnesh Kumar's case as all the offences attributed to the petitioner are punishable with a period of less than 7 years of imprisonment.*
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> *8. No doubt that as per the report CFSL Chandigarh, the video clip in question was found to be edited and dubbed and in some of the clips the fact of the victim and the family memers of the complainant was not found blurred. However, it is not the case of the prosecution that the petitioner had edited / morphed the video clip in question.*
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> *9. The source of video clip could not be produced by the petitioner before the Investigating Agency, for as per the guidelines of Ministry of Information and Broadcasting, the news channels were supposed to retain the source of the video clips displayed on the respective channels for 90 days. Even the complainant failed to produce the original mobile, the source of the video dated 2.7.2013 when his Dharam Guru had visited his residence to shower blessings to him and his family members.*
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> *10. The main grievance of the complainant is that the prosecution has not supported the final report*

against the co-accused Deepak Chaurasiya. However, it is not the abovesaid co-accused of the petitioner, who has approached the Court with the application in hand.

11. No criminal antecedents of the petitioner could be brought on the record to suggest that other cases of similar nature are also pending against him.

12. So far as the grievance of the complainant in not submitting the final report against all the 14 accused (against whom the FIR was registered) is concerned, the Protest Petition filed by the complainant in this regard is pending and the matter would be adjudicated there.

13. There is no such apprehension either raised by the prosecution while submitting the status report, or in the mind of the Court that if bailed out at this stage, the petitioner may misuse the concession of pre-arrest bail.

14. The regular bail application filed on behalf of the petitioner had been rightly withdrawn by his counsel on 14.12.2020, for the petitioner had not surrendered before the Court along with the application seeking concession of regular bail and since he had not been arrested in the present case, the application seeking concession of regular bail was not tenable. Since the final report u/s 173 Cr.P.C. has already submitted against him by the prosecution, this Court is of the view that his apprehension of his arrest by the Court, if he puts in his appearance while proceeding furtherwith the abovesaid final report, cannot be assumed to be misfounded.

> *15. As per the prosecution version, the petitioner has already been joined in the investigation of this case. He duly co-operated in the investigation of the case. The investigation is complete and the final report u/s 173 Cr.P.C. has already been submitted by the prosecutin before the Court. In the given circumstances, this Court is of the view that there is no reason to send him behind the bars only for the sake of the satisfaction of the complainant. The trial is likely to take a sufficient long time."*

On the perusal of the impugned order, it does not indicate that the same has been passed on the basis of insufficient grounds. It was observed that the offence was punishable for imprisonment of less than seven years. There was nothing to suggest that the respondent no.2 had edited / morphed the video clip in question. The source of video clip could not be produced by the respondent no.2 before the investigating agency and as per the guidelines of Ministry of Information and Broadcasting, the news channel was supposed to retain the source of video clips displayed on the respective channels for a period of 90 days. No criminal antecedents of the respondent no.2 were put forth to indicate that he was involved in any other case of similar nature. The occurrence had taken place in the year 2013, the investigation qua the respondent no.2 was complete and the report under Section 173 Cr.P.C. had also been submitted against him. As such, the reasons which weighed

in the mind of the Court while granting pre-arrest bail can be termed to be sufficient to exercise the powers granted under Section 438 Cr.P.C.

The impugned order even when tested on merit indicates that the same does not suffer from any illegality, arbitrariness or perversity which may provide any justified ground for indulgence by this Court for cancellation thereof.

Present petition is dismissed accordingly.

December 01, 2022 **[Vivek Puri]**
vkd **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes