

**IN THE COURT OF 4th ADDITIONAL DISTRICT & SESSIONS JUDGE,
SRINAGAR**

File No.:- 01/A.Bail D.O.I:-13-01-2021 Case No.:-A.Bail/10/21 D.O.O:-27-01-2021 Regn.
No.:-A.Bail/18/2021 CNR. No:-JKSG010000182021 In the Case of :-

Mihir Thakor Patel
S/o Thakorbhai Patel

..... Applicant

Through: Adv. Sajad Mohi-ud-din & Associates.

Versus.

UT of J&K State through In-charge/S.H.O
Cyber Police Station, Kashmir Zone,
Srinagar

.....Respondent

CORAM: Haq Nawaz Zargar
JCO Code:JK 00054

In the matter of: Application under section 438 Cr.P.C for grant of bail.

ORDER

1. By virtue of this order the Court shall dispose off the instant application filed in anticipation by the applicant through his counsel. It is averred in the petition that petitioner is an innocent person, resident of Gujrat and the complainant has lodged a false and frivolous complaint against him and on the basis of which FIR No.24/2020 stands registered against the applicant for the commission of offences punishable under section 153-A,298,354-A,354-D,505 (2),509 of IPC and 67,67-A IT Act.
2. Notice stands issued to the prosecution. Besides filing the detailed report, APP also filed the objections. In the objections, it has been mentioned that the petitioner is involved in a serious and grave offence and his involvement in the crime is clear. The police report clearly reflects that the petitioner is transmitting obscene/ nude contents to complainant on Instagram account handled by the complainant. It has been further averred that the accused/petitioner is deliberately evading to present before the concerned investigating agency despite being informed on his personal cell number. That the custodial interrogation of the petitioner is very much required to be

confronted with the findings of the investigation conducted so far. That the act committed by the petitioner is against the social fabric and moral values of the society. That the accused/petitioner has not cooperated with the police after seeking interim anticipatory bail from the court and is evading presence before the police. At the last, it has been prayed that application of the petitioner be rejected.

3. This Court Vide its order dated 13-01-2021 has granted the interim anticipatory bail to the petitioner on the following conditions:-

That he shall make himself available for interrogation by the investigation officer as and when required;

That he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

That he shall not leave the Union Territory without the previous permission of the court; and

That he shall not commit an offence similar to the offence of which he is accused or suspected.

4. Briefly the case of the prosecution is that Cyber Police Station had received a written complaint from one lady namely Shehla Rashid D/o Abdul Rashid Shora R/o 169, Rose Lane Colony Chanapora Srinagar, wherein it has been alleged

that Complainant is facing harassment from some unknown person who identifies himself as Mihir and having cell numbers and and Instagram account handle by the complainant. This started on 22-10-2020 at 02:58 when she started getting some inappropriate and unsolicited and totally out of context SMS messages from the above said no. on the cell No. being used by the complainant. This has cause deep anguish and torture to her, the accused/ petitioner is communicating obscene material by employing different modes in approaching and sending messages to her like Instagram and text messages. The messages have wounded her religious feelings. In his messages the accused has demanded sexual favours and exhibited nude photos with sexually coloured remarks communicated to her. Despite

blocking the number of the accused, the accused/petitioner has

continued with his activities on Instagram bearing account ID “Sabbasabbahaayrabba. The aggressive approach of the accused making obscene statement and attacking her religion and community have caused great harassment to her and insulted her modesty. The accused has employed electronic medium for transmitting obscene material and sexually explicit stuff to her which is cause of great pain to the complainant and her family.

5. On receipt of this complaint, Case FIR no.24/2020 under section 67,67-A IT Act, 153-A, 298, 354-A 354-D, 505 (2), 509 IPC has been registered against the petitioner/accused and investigation commenced. The investigation Officer has collected the hard copies of the text as well as other nude photos alleged to be sent by the accused/petitioner to the complainant from his cell numbers, besides this has also collected the details of the CAF (Customer acquisition form) of the cell numbers alleged to be used by the accused/petitioner . As per the investigating officer , the investigation is going on at present.
6. Ld. Counsel for the petitioner argued that the petitioner is ready to cooperate with investigating agency as and when he will be called. He further argued that the allegations have been made in the air as mentioned in the FIR and there is no documentary proof regarding the same. Furthermore, main thrust of his argument is on the Judgment passed by the Hon'ble Supreme Court in the case titled Arnesh Kumar Vs State of Bihar & Ors. He further argued that the petitioner is a resident of Gujarat State and since the atmosphere in Kashmir valley is very hostile, it will be not possible for the accused/petitioner to come to Srinagar otherwise he is available for interrogation on virtual mode. He further argued that the present pandemic had caused hurdles in the movement and it is not possible for the petitioner to come from Gujarat to Srinagar because of the present restrictions on account of Covid-19 pandemic. He further argued that the after passing of interim anticipatory bail order by this court, the police have never invited or summoned the petitioner as such the petitioner is not in a position to cooperate with the investigating agency. He further argued that the offences for which accused has been booked carries maximum punishment upto five years and the case of the petitioner squarely

falls under the judgment referred above. At the last, submitted that the accused/petitioner be admitted to bail in anticipation.

7. On the other hand Ld.APP for the UT argued that the complainant is a public figure and the petitioner off and on used to harass her by sending indecent, vulgar text as well as picture messages on the virtual platform used by the complainant, thus hurting the religious sentiments of the complainant, besides insulting and outraging her modesty by sending nude pictures to her. He further argued that the complainant is a highly educated girl and petitioner off and on used to stalk her on virtual mode. Besides sending defamatory messages to the complainant, attacking the religious belief of the complainant, the petitioner also demands illegal sexual favours from the complainant. He further argued that life of the complainant have turned a living hell. At the last submitted that accused/petitioner is not cooperating with the investigating agency, huge material has been collected so far by the police and accused/petitioner needs to be confronted with the same, as such no bail in anticipation be granted to him.
8. I have heard the Ld. counsel for the petitioner/accused and Ld. APP for the Union territory and also produce the material available on record including CD file.
9. Before adverting to the question raised in the present petition, it is seen that petitioner, as per police report has committed the offences under sections 153-A, 298, 354-A, 354-D, 505, 509 of IPC and 67,67-A IT Act. The allegation against the petitioner in the FIR is that he had committed the offence under section 153A IPC i.e promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language etc, and doing acts prejudicial to maintenance of harmony , offence under section 298 IPC i.e uttering, words etc, with deliberate intent to wound the religious feelings of any person, offence u/s 354A IPC i.e physical contact with explicit sexual overtures and demand of sexual favour, offence under section 354 D i.e stalking, following a woman and contacts to foster personal interaction repeatedly despite a clear indication of disinterest by such woman and also

monitors the use by a woman of the Internet or any other form of electronic communication, offence under section 505 (2) IPC i.e statements creating or promoting enmity , hatred or illwill between classes, offence under section 509 IPC i.e word,

gesture or act intended to insult the modesty of a woman, besides this the allegations against the accused/petitioner is that he had committed offence falling under sections 67 and 67A of the IT Act.

10. Bail in anticipation can be granted by following the mandate of law as guided by the Honble Supreme Court of India and Honble High Courts in India in its various Judgements. Let's take the arguments of the Id. Counsel for the petitioner one by one.

11. Ld. Counsel for the petitioner argued that instant case of the Petitioner squarely falls under the guidelines given in Judgment *Arnesh Kumar Vs. State of Bihar 2014 (8) SCC 273*, perusal of the Judgement clearly reflects that Section 41 of Cr.P.C have been interpreted:

Section 41. When police may arrest without warrant- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits , in presence of a police officer, a cognizable offence.

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely-

(i) the police officer has the reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence (ii) the police officer is satisfied that such arrest is necessary-

(a) To prevent such person from committing any further offence; or

(b) For proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner: or

- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; or
- (e) as unless such person is arrested, his presence in the court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest”.

12. From a plain reading of which clearly indicates that there is no bar to arrest the accused provided police official shall satisfy himself that arrest is necessary to prevent such person from committing any other offence, for proper investigation and to cause and prevent such person from causing the evidence of the offence to disappear. The allegations against the accused is that he is stalking on the virtual platform and had passed certain indecent, vulgar demands through messages to the complainant, besides hurting her religious feelings/sentiments. As per the police agency the petitioner is required for custodial interrogation as they have collected a huge set of evidence based on electronic platform which needs to be put to the accused during the interrogation. Thus it is the subjective satisfaction of the concerned police officer which ultimately decide whether the accused is to be arrested in cases which are punishable with less than seven years of Punishment. By going through the C/D file, it reflects that the accused/ Petitioner is evading the presence before the concerned police despite getting intimation/ notices for appearance even after the grant of interim anticipatory bail by this court. Thus the Judgement referred by the L/C for the applicant, with due respect is not applicable to the facts and circumstances of this case.

13. Furthermore, the grounds taken by the Id. Counsel for the petitioner that because of Covid-19 pandemic the petitioner is unable to come to this part of Country, doesn't hold any ground as there is no restriction on account of

COVID-19 pandemic vis-a-vis movement from any part of India to his part. The other argument raised by the Id. Counsel for the petitioner that there are harsh conditions in Kashmir and petitioner being the native of Gujrat will not feel secure in coming to Kashmir. This argument also doesn't carry any weightage on the grounds that if accused turns up here in Kashmir, he will be under the protection of the state police and the police is very much competent to take care and safety of the security of the petitioner. This ground doesn't hold any

weightage, hence rejected. Another ground raised by the Id. Counsel for the petitioner that after the passing of the order by this court the accused/petitioner have never being called by the police and as such the petitioner is unable to communicate with the police. Perusal of the CD file reflects otherwise, as per the entry made on C/D on 18-01-2021, the petitioner have been intimated and proper notice have been sent on the phone numbers and and the petitioner have received notices on virtual mode but have failed to respond to the notices. Pertinent to mention that the petitioner was on interim anticipatory bail till today. Furthermore going through the allegations made in the complaint and after perusing the CD file and going through the contents of the messages, text messages, picture messages and the fact that accused is being called and summoned regularly but he had not turned up in the court and also keeping in view the fact that complainant is a lady falling under the age group of marriageable age, stalking and passing such textual messages concerning the religion and obscenity needs not to be encouraged by granting bail in anticipation.

14. Whether allegations are true or not, is required to be examined during the course of investigation. Prime facie, petitioner as per the material available on the CD file, used to send messages which are indecent and hurting the religious sentiments of the complainant. Petitioner in his messages have not only send the obscene and vulgar pictures to the complainant but had also criticized and abused all the religions more particularly hurting the religious sentiments of the complainant. In this regard, the investigating agency have

mostly relied on collected the material available on the electronic platform and the electronic evidences are required to be examined and put to the petitioner to be confronted as most of the allegations are with reference to the electronic mode of communication.

15. On perusal of the statements made by the complainant against the petitioner it is observed that allegation against the petitioner are grave and serious, furthermore status report filed by the police concerned clearly reflects that investigation is still in process and the petitioner is evading to appear before the investigating officer and not cooperating with the police agency despite getting interim anticipatory bail from this court. Keeping in view the above legal position, it has been observed in the facts and circumstances of the case that the complainant has made specific allegations in a complaint against the petitioner and had also given a statement before the police on the same lines wherein it has been explicitly stated that the petitioner used to send obscene material on her Instagram account with request for sexual favours. Thus, the chance of petitioner's repeating the offence, tampering with the evidence exist. It is worthwhile to mention here in that the evidence collected so far by the police agency is electronic and it is subjected to manipulations at any time. Huge material in the form of text messages, hard copies, obscene material and other electronic evidence have been collected so far by the investigating agency and same is to be put to the petitioner/ accused so as to bring logical end to the investigation and also given a chance to the petitioner for confronting with the material collected so far by the police.

16. The Hon'ble Supreme Court of India in *Bhadresh Bipinbhai Sheth vs State of Gujrat* and another 2016(1) SCC 152, wherein it has been held and observed as under:

- (a) the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before an arrest is made.
- (b) The antecedents of the applicant including the fact as to whether the accused had previously undergone imprisonment on conviction by a court in respect of any cognizable offence.
- (c) The possibility of the applicant to flee from justice.

- (d) The possibility of the accuseds likelihood of repeat similar or other offences.
- (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number Of people .
- (g) The court must evaluate the entire available material against the accused carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of sections 34 and 149 of the penal code, 1860 the court should consider even with greater care and caution, because our implication in the cases is a matter of common knowledge and concern.
- (h) While considering the prayer for grant of anticipatory bail, the balance has to be struck between 2 factors namely no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.
- (i) The court should consider reasonable apprehension of tampering of the witness or apprehension of the threat to the complainant
- (j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

17. It would be futile for the petitioner to contend at this stage that none of the offences alleged against the petitioner will be made out. The investigation is still in early stages and the plea of innocence and false implication set up by the petitioner cannot be accepted. After going through the case diary, I am unable to accept the submission of the Ld. counsel that the allegations are frivolous and vexatious or that petitioner is totally innocent.

18. Just as the liberty is precious to the petitioner, so is the society is interest in

maintenance of peace, law and order. Both are equally important. The petitioner, who has alleged to have committed the offences under sections cannot claim himself to be a victim and seek for discretionary relief. As any other right minded citizen, the petitioner was expected to exercise care and caution in his acts and words and while using the digital platform.

19. After carefully evaluating the nature of allegations, the impact of exhortations made by the petitioner, its consequences and the need for maintaining the social fabric, dignity, modesty of a women and use of social platform on digital mode in these trying and hard times, the likelihood of accused fleeing from the Justice and repeating the offence, possibility of tampering with the electronic evidence and causing obstruction in the course of justice, this court is of the view that

the petitioner is not entitled to relief of pre-arrest bail. Interim bail granted vide order dated 13.01.2021 and extended from time to time is also vacated/ cancelled forthwith. Registry to compile the file and consign it to records.

Announced Haq Nawaz Zargar 27-01-2021 4th Additional Sessions Judge, Srinagar