

**JUDGMENT & ORDER**  
**(CAV)**

These petitions have been filed by the petitioners under Section 438 Cr.P.C. seeking to grant anticipatory bail in the event of their arrest in connection with FIR No.44(8)2022 under Sections 366/376/417/120-B/34 IPC on the file of the Women Police Station, Imphal West. Since the parties and the points for determination in all four Anticipatory Bail Petitions are one and same arising out of same FIR, they are taken up together and disposed of by this Common Order.

2. The case of the prosecution is that on 16.8.2022 at 5.00 P.M., the victim lodged a complaint before the first respondent police station that on 14.8.2022 at around 1.00 P.M., her Institute Teachers Sonia Yambem (petitioner in AB No.41 of 2022); Kunjarani (petitioner in AB No.42 of 2022) came to her resident located at KakwaLamdaibung near Sangai Tuition Centre, picked up for going picnic at Andro Park. On reaching the Andropark, she found Surjitkumar (petitioner in AB No.40 of 2022) and Wajid (petitioner in

AB No.43 of 2022) and some other staff and colleagues of her Institute namely Saina Institute of Medical Sciences (SIMS), Porompat. There, they had lunch and move out from Andro at 5.00 P.M. by car with Sonia and Kunjarani driver by Wajid. On the way returning from Andro to her residence, after drinking the cold drink (sprite) inside the car and under intoxication, Sonia, Kunjarani and Wajid brought her to an unknown place. She felt drowsy and semi-conscious when her teachers dropped her till the bed by holding her side by side at the unknown place. At around 9.30 P.M., when she regained her conscious, she was on the bed and the petitioner in AB No.40 of 2022 was sitting beside her. Meanwhile, she asked him about her teachers, but he stated that they are eloped and teachers left. Despite her opposition, the victim was forcibly raped by the petitioner in AB No.40 of 2022 twice by locking the door without her consent, which she could not be able to be struggled due to intoxication and it was around 10.00 P.M. Next day, the victim learnt that the house belongs to teacher Wajid located at Sekmaijing. When the family of Surjitkumar arrived, she told them that he forcibly eloped and raped her against her consent, but they have not listen her words. She disclosed whatever they did to her parents when she returned home. On receipt of the complaint the WPS, Imphal West registered a case in FIR

No.44(08)2022 under Sections 366/376/417/120-B/34 IPC against the accused and took up the matter for investigation and searching the accused.

3. The case of the petitioners is that the petitioner in AB No.40 of 2022 [Surjitkumar] came to know the victim from her facebook account and they have love affairs for the last about 5 years. On 14.8.2022, the petitioner in Surjitkumar and the victim participated in a picnic programme at Andro village and after the picnic party, they decided to elope for love marriage. Accordingly, they eloped on the same day and stayed the night at MayangImphal. On the following day, they came back to the house of the petitioner Surjitkumar and in the morning some elder male members of his family, including his father visited the residence of the victim for "Haidokpa Ceremony" and they returned home without having any objection from the victim's family. Thereafter, on 15.8.2022 at 5.00 P.M., the victim was escorted by elder female members of petitioner Surjitkumar to her residence. However, to the surprise and their dismay, one lady said to be the elder sister of the victim came out suddenly and started beating the victim by holding the hair. At that time, there was a scuffle between the parties and later on 16.8.2022, the victim was forced to lodge a complaint to the police against the

petitioners herein. Thus, according to the petitioners, there is possibility of the petitioners being arrested by the police in connection with the FIR 44(8)2022, which was lodged afterthought and duress. Hence, the petitioners seek anticipatory bail in connection with the aforesaid FIR.

4. Opposing the petitions, the first respondent police filed affidavit-in-opposition stating that after registering the case on file, the investigating officer took up the case for investigation, the victim was examined and in her statement she stated that on the way of returning from Andro to her house, she was administered some intoxicants inside the car and she became semi-conscious and was held by the petitioners in AB Nos.41 and 42 of 2022 side by side and took her to a room of an unknown place and they dropped till the bed. At around 9.30 P.M., the victim regained her sense and found she was on the bed and petitioner Surjitkumar was sitting on the bed. When she asked him about her two teachers, he stated that they are eloped and the teachers already left. The petitioner Surjitkumar also said that while the victim was unconscious, he already had sexual relationship with her.

5. It is stated that due to paucity of time, the recording of the victim's statement under Section 164 Cr.P.C. could not be completed and the medical report of the victim is also yet to be received from the department. Several attempts have been made to cause arrest of the accused at different locations, including Bishnupur, Kumbi, Samthel, Hangul and Ngaikhong etc. by preparing house search to the area where they were suspected to be hiding, but they are evading from police arrest till date. The petitioners are very much required for interrogation by arrest. Hence, prayed for dismissal of the petitions.

6. Opposing the petitions, the victim who has been arrayed as second respondent, has filed affidavit stating that she did not admit that she is pursuing nursing course at SIMS as alleged and in fact she got admitted at SIMS of her own volition for undergoing two years Diploma in Dialysis and after pursuing the said course, the victim gave up the said course and started pursuing B.Sc. in Echocardiography at SIMS. The victim never had long drives and outings to different places and during the educational trip to Gao, the petitioner Surjitkumartook photographs with many students one after another and he did not take photographs with the victim in isolation and the photographs showing holding of hands were modified one from a group photographs. It is stated that during the entire period of study at SIMS, the

victim did not have any relationship with the petitioner Surjitkumar except the teacher-student relationship and she showed respect to the petitioner Surjitkumar being the Managing Director of SIMS.

7. It is stated in the affidavit that thereafter the petitioner Surjitkumar and Wajid took her to another unknown place and there she was forcibly raped by the petitioner Surjitkumar twice by locking the door without her consent. Next day, the victim came to know that the house belongs to the petitioner Wajid. On 15.8.2022 morning, the Surjitkumar's family came to Sekmaijing and at that time she told them that Surjitkumar forcibly eloped and raped against her will, but they does not listen to her request. Thereafter, the victim was brought to the house of the petitioner Surjitkumar and while she was in his house, Surjitkumar and his family members consoled her to say that the elopement was happened with her consent. Thereafter, the victim narrated whatever the petitioners had done to her when she returned home.

8. In her affidavit opposing the anticipatory bail in respect of the petitioners in AB Nos.41 to 43 of 2022, the victim also stated that when her

teachers Sonia made a phone call on 13.8.2022 asked the victim about the preparation for the picnic, the victim answered that due to personal difficulties, she would not be able to attend and inspite of that on 14.8.2022, the petitioners Sonia and Kunjarani came to her house and picked up in a white colour car and was taken to the picnic at Andro where she found around 20 individuals including the teachers, staff and students. After having their dinner, when they came back to the spot where the while colour car was parked, the said car was not found and the petitioner Wajid offered to drive them back. Accordingly, the petitioners Sonia, Kunjarani and younger sister of Kunjarani boarded the car. After driving for some distance, petitioner Sonia gave her a cold drink inside the car and after having three sips, the victim started feeling drowsy.

9. It is stated that the petitioner Wajid stopped the car and the victim was taken to an unknown place by the petitioners Sonia and Kunjarani and after some time when the victim gains conscious she found the petitioner Surjitkumar sitting on the bed. When the victim asked about the teachers, he replied that they had left. Then the petitioner Surjitkumar told her that they had already eloped and would not be able to drop her at her house. At that

time, the victim told the petitioner Surjitkumar that she would die rather than elope with him. While doing so, the petitioner Wajid came inside the room and proposed for shifting the victim to another place. Thereafter, the petitioners Surjitkumar and Wajid forcibly lifted her and took inside the car and drove her to an unknown place. When she was taken inside the room she saw a certificate of the petitioner Wajid on the wall.

10. It is stated that on 14.8.2022, the petitioner Surjitkumar forcibly raped the victim without her consent. The victim tried to fight him off but was physically helpless due to intoxication. The petitioner Surjitkumar then told her to admit that she had eloped with him with her full consent and threatened her with dire consequences if she do not do as he said. Fearing for her life and the consequences, she did not say anything as she want to reach home safely. Again on the next day morning i.e. on 15.8.2022, the petitioner Surjitkumar forcibly raped the victim again without her consent.

11. It is stated that after the said incident the victim enquired someone inside the house about the location of the place, who then told her that it is



Sekmaijin village and on the same day at around 8.00 P.M., the parents of the petitioner Surjitkumar brought the victim to her house. While dropping her off, they also handed over a new iPhone, a bundle of Rs.500/- currencies, gold ornaments, clothes etc. However, the same were returned to them. Later around 1.00 A.M. on 16.8.2022, the victim's phone was returned back. Thereafter, the victim narrated the horrific incident to her parents. Stating so, the victim prayed for dismissal of the anticipatory bail petitions.

12. The learned counsel for the petitioners submitted that the petitioner Surjitkumar and the victim have love affairs and willingly eloped, therefore, there is no offence as alleged by the victim. He would submit that the petitioner Surjitkumar is from a respectable family and he is the Founder and Managing Director of SIMS, which is a recognized affiliated nursing college, having no criminal antecedent and because of the registration of the FIR case, he has all reasons to believe that he may be arrested on the accusation of having committed the alleged offenses stated in the FIR, which are false and baseless and afterthought.

13. The learned counsel further submitted that the nature of accusation is quite baseless, inasmuch as the victim was spending good and happy times with the petitioner for the last 5 years by enjoying gift items, cash, gold rings and chain, beautiful dresses, birthday gifts and many others and now she is reverting all her attitude and stands against the petitioner Surjitkumar by lodging a complaint.

14. Mr. N. Jotendro, the learned senior counsel for the petitioners submitted that as far as the petitioner in AB No.41 of 2022 is concerned, she has been falsely implicated in the aforesaid charges, as she simply joined the picnic and there is no question of collusion with any parties for someone personal gain and to let a person rob the dignity of a girl.

15. Mr. N. Jotendro, the learned senior counsel for the petitioners would submit that as far as the petitioner in AB No.42 of 2022 is concerned, she is presently living with her son at the parental home, after leaving her marital home due to various cruelties committed by her husband. Presently, there is no one except her who is taking care for her minor son who is in need

of breastfeeding and, as such, in the event, she is arrested, her son will suffer. In fact, she has been falsely implicated in the aforesaid charges, as she simply joined the picnic and there is no question of collusion with any parties.

16. Coming to the petitioner in AB No.43 of 2022, Mr. N. Jotendro, the learned senior counsel for the petitioner submitted that he is from a respectable family having no criminal antecedent as he was never imprisoned or otherwise conviction by any Court. He submits that the petitioner in AB No.43 of 2022 is serving as Deputy Director of SIMS, which is a reputed Government recognized and affiliated nursing college founded by the petitioner Surjitkumar. The petitioner in AB No.43 of 2022 is no way related to the alleged offences and his name was not mentioned in the FIR. According to the learned counsel, the petitioner in AB No.43 of 2022 allowed the victim and Surjitkumarto stay the night of 14.8.2022 at his residence at Sekmaiijn village, as on that day there was no incident or gesture of any coercion or otherwise upon the victim as she was happily came with the petitioner Surjitkumar to his residence. If the respondent police arrested the petitioner in AB No.43 of 2022 in connection with the FIR case, his good image and reputation in society will be tarnished forever which may not be compensated

in any manner. Arguing so, the learned counsel for the petitioners prayed for anticipatory bail to all the petitioners.

17. Per contra, Mr. Y. Ashang, the learned Public Prosecutor submitted that the victim was picked up for going picnic at Andro park by the petitioners in AB Nos.41 and 42 of 2022 from her residence and on reaching the park, she found the petitioner Surjitkumar. After finishing picnic, when the victim and the petitioners in AB No.41 and 42 of 2002 were returning in car driven by the petitioner in AB No.43 of 2022 along with the petitioner Surjitkumar, they had given some cold drink to the victim and after consuming the cold drink, the victim fell semi-conscious and taking advantage of the drowsy, kidnapped herto the residence of the petitioner in AB No.43 of 2022 and after reaching the said residence, the petitioners in AB Nos.41 and 42 of 2002 were left. While the victim was unconscious, the petitioner Surjitkumar had sexual relationship with the victim without her consent and thereafter, with the help of the petitioner in AB No.43 of 2022, the petitioner Surjitkumar taken the victim to another unknown place, where she was forcibly raped by him without her consent.

18. The learned Additional Public Prosecutor further submitted that the said fact was disclosed by the victim during the course of investigation and that during the course of further investigation, statements of several prosecution witnesses including the elder sister of the victim were recorded who fully corroborated with the statement of the victim.

19. The learned Additional Public Prosecutor submitted that the petitioner Wajid by using his own car assisted the petitioner Surjitkumar in the abduction of the victim and also concealed the crime from the victim's family. Similarly, the petitioners, Sonia and Kunjarani had also assisted the petitioner Surjitkumar in the abduction of the victim and thus, all three i.e. the petitioners in AB Nos.41 to 43 of 2022 helped the petitioner Surjitkumar to kidnap the victim by playing a drama saying that the petitioner Surjitkumar and victim already eloped. They had also administered some intoxicants while travelling in the car to the victim and after drowsing of the victim, the petitioners Sonia and Kunjarani held the victim side by side and took her till the bed in the house of the petitioner Wajid. Thus, the involvement of all the petitioners for the commission of the offences alleged against them are prime facie proved

and therefore, they cannot be granted anticipatory bail and their petitions for anticipatory bail are liable to be dismissed.

20. This Court considered the rival submissions and also perused the materials available on record.

21. The grievance of the petitioners is that the petitioner Surjitkumar fell in love with the victim since 5 years ago and on 14.8.2022, the petitioner Surjitkumar and the victim participated in a picnic programme at Andro and after the picnic party, they decided to elope for love marriage and accordingly they eloped on the same day and stayed the night at Mayang. On the following day, they came back to the petitioner Surjitkumar's house and in the morning some elder members in the family of the Surjitkumar visited the residence of victim for "Haidikpa Ceremony" and they also returned home without having any objection from the victim's family. On 15.8.2022, the victim was escorted by elder female members of the Surjitkumar to the residence of victim in the evening. However, to the surprise and dismay, the elder sister of the victim came out and started beating the victim and at that

time there was scuffle between the parties. While so, on 16.8.2022 with the advice of the elder sister, the victim lodged a complaint against the petitioners in AB Nos.40 to 43 of 2022. According to the petitioners, they have been falsely implicated in the alleged commission of the crime.

22. On the other hand, the prosecution as well as the victim stated contrary plea that the petitioner Surjitkumar by administering the intoxicants with the help of the petitioners in AB Nos.41 to 43 kidnapped and had sexual intercourse forcibly without the consent of the victim. Thus, they had committed the offences punishable under Sections 366/376/417/120-B/34 IPC.

23. The petitioner Surjitkumar is the Founder and Managing Director of SIMS and the victim is a student pursuing a course in the said Institution. The materials produced and the statement of witnesses, including Section 161 Cr.P.C. statement of the victim prima facie establishes that the petitioner Surjitkumar conspired with his subordinate staff, namely the petitioners in AB Nos.41 to 43, kidnapped the victim and without the consent of the victim the

petitioner Surjitkumar had sexual intercourse forcibly. The prima facie material also establishes that the petitioner Surjitkumar had committed a heinous crime against his own student and thus it is a blot on the student-teacher relationship, which deserves no leniency.

24. At this juncture, the learned Additional Public Prosecutor submitted that in order to unearth the truth in this case, the custodial interrogation of the petitioners is very much required. This Court finds some force in the submission made by the learned Additional Public Prosecutor looking into the crime committed by the petitioners against the victim.

25. Drawing this Court's attention to paragraph 5 of the affidavit-in-opposition filed by the first respondent police, the learned Additional Public Prosecutor submitted that several attempts had been made to cause arrest of the petitioners at different locations, including Bishnupur, Kumbi, Samthel, Hangul and Ngaikhong etc. by preparing house search to the areas where they were suspected to be hiding, but they are evading from the police arrest so far and that they have to be treated as proclaimed offenders. It is also the



submission of the learned Additional Public Prosecutor that in view of the gravity of the offence and the severity of punishment in the event of conviction, the petitions may be dismissed.

26. The Hon'ble Apex Court, in the case of **Lavesh v. State, (2012) 8 SCC 730**, held that normally, when an accused is declared a proclaimed offender, he should not be granted anticipatory bail. In paragraph 12, the Hon'ble Apex Court held as under:

*"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."*

27. It is to be mentioned that earlier, the petitioner Surjitkumar filed Cril. Misc. (AB) Case No.226 of 2022 before the learned Sessions Judge, Imphal West and by the order dated 26.8.2022, the said application was dismissed. Similarly, the petitioners Sonia, Kunjarani and Wajidhave filed Cril. Misc. (AB) Case Nos.220 and 221 of 2022 before the learned Sessions Judge, Imphal West and by the order dated 31.8.2022, the learned Judge dismissed the said petition also. While dismissing the petition, the learned Judge observed as under:

*“10. Considered the rival submissions and the materials on record and the case diary. The involvement of the Sonia Yambem, LaishramKunjarani and SK Wajid Shah in conspiracy to abduct the victim to compel her to marry with main accused Surjit is apparent. On the other hand, they did not share much information. Accordingly, bail application is rejected and the interim bail granted on 20.8.2022 is vacated.”*

28. This Court finds no infirmity in the findings arrived at by the learned Sessions Judge that the involvement of the petitioners in AB Nos.41 to 43 of

2022 in conspiracy to abduct the victim to compel to marry with the petitioner Surjitkumar is not only apparent and the same has been prima facie established the prosecution.

29. Anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved and/or the custodial interrogation is required and/or the other aspects and facts are required to be unfolded in investigation, the petitioners are not entitled for anticipatory bail.

30. It is a well-settled law that while considering the question of grant of anticipatory bail, the Court prima facie has also to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the petitioner and also the possibility of the petitioner fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

31. The learned counsel for the petitioners submitted that a person seeking anticipatory bail is still a free man entitled to presumption of innocence. In the case on hand, the petitioners are innocents and therefore, they can be granted anticipatory bail.

32. It is also the submission of the learned counsel for the petitioners that the petitioner Kunjarani has to take care of her minor son who is in need of breastfeeding and as such in the event, she is arrested her son will suffer. The learned counsel further submitted that breastfeeding is an integral part of the reproductive process, the natural and ideal way of feeding the infant and unique biological and emotional basis for child development.

33. It is true that breastfeeding is the best way to give babies all the necessary nutrients and antibodies, which provide a vital shield of protection, the experts in the field of neo-natal science are of considered opinion that the interaction between the lactating mother and the suckling infant involves a world of messages, which is essential for the intellectual and emotional

development of the child. The World Health Organisation recommends exclusive breastfeeding until the baby attains the age of at least six months.

34. In the case on hand, though the petitioner Kunjarani stated that her minor son who is in need of breastfeeding and if arrested her son will suffer, first of all, the age of her son has not been given. In the absence of the age of her son, based on mere averments, the Court cannot come to a conclusion that there appears to be bona fide in her plea.

35. In the earlier paragraphs this Court held that prima facie the offence is made out against the petitioners qua kidnap, rape and cheating with conspiracy. Further, the prosecution has prima facie established the involvement of the petitioners into the crime.

36. In so far as the grant or refuse of the anticipatory bail, the Hon'ble Apex Court in the case of ***SiddharamSatlingappaMhetre vs State of Maharashtra and others, (2011) 1 SCC 694*** has laid down the parameters as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused 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;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in

the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two 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;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) 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.”

37. Further, in ***Jai Prakash Singh vs. State of Bihar, (2012) 4 SCC 379***, the Hon'ble Apex Court further elucidated the principles for consideration of anticipatory bail, which are as under:

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran&Ors., (2007) 4 SCC 434*, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S.Husain, (2008) 1 SCC 213*, and *Union of India v. PadamNarain Aggarwal, (2008) 13 SCC 305*).”

38. Time and again, the Hon'ble Apex Court held that the important thing that the Court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young woman will not put her reputation in peril by alleging falsely about forcible sexual assault. A forcible sexual assault



brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

39. Taking into consideration the nature and the gravity of the offence, severity of punishment and to unearth the conspiracy and the alleged roles of the petitioners in the commission of the offences, the possibility to repeat similar or other offences, particularly the petitioner Surjitkumar and impact on the public in case the anticipatory bail is granted to the petitioners as well as the fact that the petitioners have been evaded from the arrest of the respondent police, this Court is of the opinion that the petitioners are not entitled to anticipatory bail. This Court does not find anything on the record to satisfy itself, at this stage, that there are grounds or more to say reasonable grounds for granting anticipatory bail to the petitioners. Thus, this Court does not find any merit in the anticipatory bail applications of the petitioners.

40. In the result, the anticipatory bail applications are dismissed.

41. The interim bail orders already granted by this Court on 31.08.2022 in AB No.40 of 2022, 02.09.2022 in AB Nos.41 & 42 of 2022 and 06.09.2022 in AB No.43 of 2022 are vacated.

42. It is made clear that the observations made in this order are limited to the question of considering the anticipatory bail to the petitioners and this Court has not delved into the merits of the offences levelled against the petitioners.

**JUDGE**

***FR/NFR***

***-Larson***