

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 38085 of 2014 (O&M)
Date of decision : February 26, 2015

Rajbir and others,

..... Petitioners

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. JS Bedi, Sr. Advocate with
Mr. Lovekirat Singh Chahal, Advocate
for the petitioners.

Mr. Ashish Yadav, Addl. A.G Haryana

Mr. Salim Ahmad, Advocate
for respondent No.2.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

The petitioners seek grant of anticipatory bail in case FIR No.1021, dated 1.12.2013, registered under Sections 498A, 304-B, 34 of the IPC, at Police Station City Rohtak, District Rohtak.

On 9.12.2014, the following order was passed :-

“ This is a petition for anticipatory bail filed by father, mother and brother-in-law of the deceased Buntty Devi who died of hanging. In the police investigation, the present petitioners were kept in column No.2 for the reason that it was shown that they were living separately from the couple. Thereafter, when the complainant

testified in Court and deposed about the acts of cruelty which as per him were perpetrated by the petitioners, they were summoned under Section 319 Cr.P.C. and hence the present petition.

Learned counsel for the complainant is not in a position to deny the fact that the present petitioners were not staying with the deceased and her husband at the time of her death. He has however raised an objection that the petitioners being not moved a petition before the Sessions Judge have rushed straightway to this Court.

Learned Senior Counsel for the petitioners has sought to argue that as per his experience whenever the Court summons a person under Section 319 Cr.P.C. it would not grant anticipatory bail. I have my doubts about both the factual conclusion which has been drawn by the learned Senior Counsel and about their being any such position in law that the Court which has summoned an accused will not grant him anticipatory bail, if otherwise justified.

Learned senior counsel for the petitioners seeks a short adjournment to dilate on this issue but states that since the matter is fixed for tomorrow i.e. 10.12.2014 before the trial Court the petitioners be permitted to appear before the Court under protection.

I find this to be a fair request. Resultantly, even while adjourning the matter for a further understanding on the issues first pointed out, it is directed that the trial Court shall release the petitioners on interim bail to its satisfaction subject to the orders which may pass by this Court.

Adjourned to 23.01.2015.

A copy of this order be given to the learned counsel for the petitioners under the signatures of the Bench Secretary.”

Even today, neither counsel for the petitioners or counsel for the complainant nor counsel for the State of Haryana have been able to point out any judicial pronouncement dealing with this issue. In a number of judgments, the Hon'ble Supreme Court has held that wherever the law has granted concurrent jurisdiction (as for instance, on the Court of Sessions and High Court for grant of anticipatory bail), as a matter of practice it is normally appropriate that a person should first approach the Court lower in hierarchy. It is against the backdrop of this legal position that the

apprehension of the learned counsel for the petitioner has to be viewed.

Counsel for the petitioners has vehemently argued that even after the Hon'ble Supreme Court has reduced the rigours of Section 319 of the Cr.P.C in Hardeep Singh vs State of Punjab, 2014(1) Law Herald (SC) 47 (from 'probability of conviction' to 'reasonable prospect of conviction'), the Court issuing summons would not grant anticipatory bail. In my opinion, this argument cannot be accepted. It is well known that pre-trial custody is jurisprudentially justified only for the purpose of investigation, even though there are other relevant factors i.e the severity of the allegations, the antecedents of the accused etc. In the circumstances, it is quite possible that even while a Court deems it appropriate to summon a person to face trial yet it may not deem it necessary (particularly when the investigation is over) to require pre-conviction custody of such an additional accused. The apprehension of counsel for the petitioners that the Court would only be influenced by the fact that it has found some material against the accused is not entirely correct because while deciding the petition for anticipatory bail the Court would also have to consider the fact that the investigating agency had found the additional accused to be not guilty. The argument of counsel for the petitioners that under Section 319 (4)(b) of the Cr.P.C, the additional accused has to be treated as if he was accused on the first day would again to my mind not impact the judicial consideration of a prayer for bail.

In the circumstances, this petition is disposed of at this stage giving the petitioners liberty to move the competent court for anticipatory bail. If such an application is moved on or before 20.3.2015, the same will be decided on merits, and till the Court takes a decision thereon, arrest of

the petitioners shall remain stayed.

Copy of this order be given dasti to counsel for the parties on payment of usual charges.

February 26, 2015
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(AJAY TEWARI)
JUDGE

