

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 39032 of 2015 (O&M)
Date of decision : December 03, 2015

Sahab Singh,

..... Petitioner

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ashit Malik, Advocate
for the petitioner.

Ms. Tanushree Gupta, D. A.G Haryana

Mr. Sanjiv Gupta, 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 petitioner seeks grant of anticipatory bail in case FIR No.136, dated 5.3.2015, registered under Section 304-B/34 of the IPC, at Police Station Samalkha, District Panipat.

Counsel for the petitioner states that in a similar situation, this Court in CRM-M No.38085 of 2014, Rajbir and others vs State of Haryana and another, decided on 26.2.2015, held as follows :-

“ 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 these circumstances, this petition is disposed of at this stage giving the petitioner liberty to move the competent court for anticipatory bail. If such an application is moved on or before 05.12.2015, the same will be decided on merits, and till the Court takes a decision thereon, arrest of the petitioner shall remain stayed.

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

(AJAY TEWARI)
JUDGE

December 03, 2015

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