

212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12237 of 2017

Date of decision: May 03, 2017

Kartar Singh Kataria

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Karanvir Singh Khehar, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

Mr. R.S. Budhwar, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

This Court had, vide order dated 07.03.2017, dismissed the application for grant of anticipatory bail that was filed by the present petitioner with the following observations:-

“I have gone through the suicide note with the assistance of learned counsel for the complainant. My attention is invited to the last portion of the suicide note, which states that the CBI has investigated his role. But that has nothing to do with the present offence. In the present case it is seen that the allegations are that the petitioner was blackmailing the deceased and secondly signatures of the deceased were obtained on blank papers. I think this is a matter of investigation and therefore, the petitioner's custodial interrogation is necessary.”

Thereafter, Supreme Court passed the following order:-

“The special leave petition is dismissed.

However, there shall be stay of arrest against the petitioner for a period of two weeks only from today.

In the meantime, the petitioner is allowed to apply for

regular bail before the appropriate court which shall consider the same on its own merits and in accordance with law.”

The petitioner then applied for grant of regular bail before the Additional Sessions Judge, Yamunanagar at Jagadhri and the said Sessions Judge dismissed the application for regular bail with the following observations:-

“So, keeping keeping in view the facts and circumstances of the case and also considering the entire contentions wherein it is not the stage to dwell upon merits of the case; the contentions raised by the applicant-accused to the effect that the applicant-accused has been falsely implicated in this case or the fact as to whether there was no instigation, conspiracy or aid on the part of the applicant-accused compelling the deceased to end his life are touching the merits of the case which are to be adjudged only after recording the trial. Be that as it may, at this stage, there is prima face evidence in the shape of suicidal note wherein, the applicant-accused has been specifically named. Investigation is still in progress and there is apprehension on the part of the prosecution that in the event of release of the applicant-accused on bail, then, it would be difficult to procure the documentary evidence and that the applicant-accused, being senior officer of the deceased, may tamper with the proposed prosecution evidence.”

Learned counsel for the petitioner candidly stated that the petitioner has not yet surrendered before the Magistrate before whom the FIR is pending. In my opinion, in the light of the observations made by this Court while rejecting the anticipatory bail application, the only way for the petitioner is to surrender before the trial Court and he cannot be allowed to use the order made by the Apex Court for remaining at large. Learned counsel, however, submitted that instead of surrendering before the police officer, the petitioner would like to surrender before the Magistrate.

It appears that the petitioner has some apprehension about the

police. The request to appear before the Magistrate does not sound unreasonable. The finding given by this Court about the custodial interrogation of the petitioner can still be taken care of by asking the learned Magistrate to hear the parties including the concerned police officer asking for police custody remand if at all and then pass suitable orders. At any rate, the petitioner will have to surrender before the Magistrate as the regular bail application can be filed by the petitioner only before the Sessions Court since the offence in question is triable by the Sessions Court. In that view of the matter, following order is passed:-

ORDER

- (i) Petition in the present form filed by the petitioner without surrendering is rejected;
- (ii) The petitioner shall surrender before the learned Magistrate concerned on 05.05.2017 in the Morning. The Investigating Officer shall also remain present before the learned Magistrate and the Magistrate shall then hear both the parties and make suitable orders according to law including the police custody remand or judicial custody as the case may be;
- (iii) The petitioner is free to apply for regular bail before the trial Court as observed by the Apex Court in its order.

(A.B. CHAUDHARI)
JUDGE

May 03, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No