

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 23867 of 2017 (O&M)
Date of decision: 1.8.2017

Vivek Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Gautam Dutt, Amicus curiae.

JAISHREE THAKUR, J.

This petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No. 402 dated 7.12.2016 (Annexure P/1) registered under Sections 363 and 366 IPC at Police Station Sector 18, Gurugram, District Gurugram.

In brief, the facts are that the aforesaid FIR was registered on a complaint of Shamsher son of Sh. Maha Singh, resident of 2318/9, Vishal Nagar, Rohtak. The allegations in the said complaint were to the effect that his sister Deepti was working in Gurugram and residing in M.G. Road, Sukhrali. On 3rd December, 2016, he made a call to his sister and asked her to come home for a visit to which she replied that she would visit home. Thereafter, her Mobile Nos. 8010004337 and 9466127574 were found to be switched off. Since he could not contact his sister, he went to Gurugram and

was informed by the landlady that his sister Deepti had already left on 3rd December, 2016 at 11.30 by telling her that she was going to home. The complainant searched for his sister at his own level, but he could not found her. The complainant suspected that Vivek son of ADC Shiv Parsad of Sonepat had enticed away his sister, therefore, he requested the police to take action.

Learned counsel for the petitioner contends that the petitioner is not involved in enticing away the sister of the complainant and to substantiate this fact, he relied upon call details of 'WhatsApp' chatting produced before the lower court, which showed that on the date of alleged occurrence i.e. 3.12.2016, the sister of the complainant had sent a message to the petitioner that she is going to her house and asked the petitioner not to contact her. After this message, it is alleged that the petitioner never contacted the sister of the complainant. It is argued that the bail application filed has been wrongly rejected by the learned Additional Sessions Judge, Gurgaon, while submitting that the petitioner is ready and willing to undergo tests, be it 'lie detector test', 'narco test' or 'brain mapping test's to back up his plea that he is unaware of the whereabouts of the sister of the complainant.

Per contra, a reply has been filed in this petition by the Assistant Commissioner of Police (Law and Order), Gurugram, in which it is stated that during the investigation of the case call details of the phone of the accused Vivek Sharma and Deepti were collected from Cyber Cell.

Notice under Section 41 (1) of the Cr.P.C. was also issued to accused Vivek

Sharma at his residence for joining the investigation. Interim bail had been granted to the petitioner by the learned Additional Sessions Judge, Gurgaon, vide order dated 27.12.2016 and he joined the investigation on 4.1.2017 and incriminating evidence came forth against him. In the affidavit, it is also submitted that the petitioner did not cooperate with the Investigating Officer and also did not disclose about any clue about Deepti.

Learned counsel for the State argues that without custodial interrogation of the petitioner, it would not be possible to find out about the whereabouts of Deepti, who is missing since 3.12.2016.

I have heard learned counsel for the parties and produced the case file as well as the judgments relied upon.

This Court had asked Mr. Gautam Dutt, Advocate, to assist the Court as to the admissibility and evidentiary value of the polygraph test, which the petitioner submits that he is willing to undergo without being in judicial custody.

To this query, Mr. Dutt submitted that polygraph test is not a substantive evidence nor is it conclusive, it cannot be used to prove the guilt of the accused.

On the other hand, learned counsel for the petitioner, while relying upon the judgments in **Smt. Selvi and others Versus State of Karnataka and others 2010 (2) RCR (Crl.) 896, Dr. Purshottam Swaroopchand Soni Versus State of Gujarat 2008 (61) AIC, 740, Ramchandra Ram Reddy and others Vs. State of Maharashtra 2005 (1) CCR 355, Dinesh Dalmia Versus State 2006 (4) RCR (Crl.) 361, Moti**

Ram Versus State of Rajasthan 2013 (25) RCR (Crl.) 375 and Sampatrao Rajeshwarrao Arvelli Versus State of Maharashtra 2009 (5) RCR (Crl.) 607, argues that if the petitioner himself is willing to undergo a lie detector test or brain mapping test or narco test, he should be allowed to undergo the same. It is argued that only such result of brain mapping/narco test/polygraph test would be inadmissible in evidence, in case the same has been done without obtaining the consent of the person concerned, which would not be so in the instant case.

Admittedly, the petitioner herein was in contact with the sister of the complainant on 3.12.2016, who is missing since then. As per the affidavit filed and the investigation of the police, there are incriminating evidence available against the petitioner, as such, his custodial interrogation is required. The plea of voluntarily undergoing of polygraph test is negated on the ground that such test is not conclusive in nature and not foolproof.

Therefore, in view of the fact that a young girl is still missing and involvement of the petitioner at this stage cannot be ruled out, as such, it would be necessary to interrogate the petitioner in this regard, this Court is not inclined to hamper the investigation.

Consequently, this petition is dismissed.

1.8.2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No