

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

**CRM-M-24863-2017
Date of decision :22.09.2017**

Om Parkash

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Piyush Chhabra, Advocate for
Mr. N. S. Sidhu, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Sandeep Gahlawat, Advocate
for the complainant.

H.S. MADAAN, J.

This petition for grant of pre-arrest bail under Section 438 Cr.P.C. has been moved by Om Parkash an accused in FIR No. 315 dated 25.06.2017 under Section 306/34 IPC registered at Police Station Shivaji Colony, District Rohtak, Haryana.

Briefly stated facts of the case are that complainant – Rajesh son of Vijender resident of # 2389 / 4, New Rajendra Colony, Rohtak had got recorded his statement with police of Police Station Shivaji Colony,

Rohtak on 25.06.2017, wherein he stated that his younger brother works in a private company whereas his father Vijender retired from Nav Bharat, Rohtak and used to stay at home, he was aged about 62 years; that Manoj Kumar aged about 38 years, a younger brother of complainant was married with Snehlata daughter of Om Parkash resident of Kakrola, Najafgarh, New Delhi about 11 years back; that his father Sh. Vijender had lent ₹30 lacs to Sh. Om Parkash, who had promised to return the money; that according to complainant Sh. Om Parkash has borrowed ₹24 lacs from one Ashwani Kumar son of Mahavir; Sumit and Amit sons of Ashwani Kumar resident of Indra Colony, Rohtak to hand over Om Parkash; that according to the complainant, he had asked Om Parkash again and again to return the money but to no effect; that on the other hand Ashwani Kumar and his sons kept putting pressure upon his father Sh. Vijender to return the money so borrowed by them; that according to the complainant because of non-return of money Om Parkash and pressure from Ashwani Kumar and his sons for return money at about 3:30 p.m. on 24.06.2017, he received information from home that Sh. Vijender had consumed some poisonous substance; that he accordingly rushed home and found that his father was unwell and stated that he was under pressure of money. Therefore, consumed celphos tablets; that he was taken to PGIMS Rohtak, but he died there.

Apprehending his arrest in this case, the petitioner had approached Court of Sessions for seeking pre-arrest bail, but his such request was declined by learned Additional Sessions Judge, Rohtak vide order dated 06.07.2017, as such, he has come to this Court seeking similar relief by filing the instant petition, notice of which was given to the State.

I have heard learned counsel for the parties, besides going through the record.

In the suicide note said to have been left by deceased – Vijender, it is specifically mentioned that he had lent a sum of ₹30 lacs to his relative Om Parkash, who had promised to find employment for his sons or install factory for them; that he had borrowed money from Ashwani. Inter alias in the note, it is mentioned that Om Parkash had got registered a case against him and his family on false allegations; that Sh. Vijender had died an unnatural death after consuming celphos tablets. From the dying declaration it appears that the accused had abetted such suicide by the deceased though he was granted interim bail to enable him to join the investigation. He is stated to have joined said investigation but not rendered full co-operation to the investigating agency.

Learned counsel for the petitioner has referred to citation **Ashish Chaudhary vs. State, CRR-725-2007** by High Court of New Delhi whereas *a person had committed suicide after leaving a suicide note alleging that the petitioners were responsible for his death because some of them compelled him to return the loan taken by him even though they had been charging exorbitant rate of interest by accused one of them had taken loan from him but failed to return it. No charge for offence under 306/34 IPC made out.* This authority essentially dealt with the aspects of the necessary ingredients of offence under Section 306 IPC required to be there for framing formal charge for the said offences. In the instant case we are dealing with the question of grant of bail in a case under Section 306 IPC. The consideration in two cases are different. In the case of framing of

charge it is to be seen as to whether sufficient material is there to frame formal charge for the offence and in case of grant of pre-arrest bail, the point to be determined is as to whether custodial interrogation of the petitioner is required or not.

Similarly as regards other authority **Jagdish Nautiyal vs. State, 2012 Legal Eagle (Del) 2042 by High Court of Delhi** wherein it was observed *unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.* Again the facts of that authority and the present one are quite different.

Similarly the other authorities referred by learned counsel for the petitioners titled as ***Ajit Singh vs. State (Govt. of NCT of Delhi) CRL. M.C. 1969/2009; Vivek Kumar Jain and another vs. State of M.P. and another M.Cr.C. No.815 / 2014 of Madhya Pradesh High Court; Paramjeet Singh Chawala vs. State of Madhya Pradesh, 2007 Legal Eagle (MP) 1552; Sanju alias Sanjay Singh Sengar vs. State of M.P. 2002 (5) SCC 371 and Bhadresh Bipinbhai Sheth vs. State of Gujarat and another, Criminal Appeal Nos.1134-1135 of 2015 of Hon'ble Apex Court*** are not applicable due to different facts and circumstances.

Here custodial interrogation of the petitioner is found to be necessary. As regards the contention of learned counsel for the petitioner that the petitioner's daughter was married with son of the deceased and she was tortured & harassed and litigation in that regard is pending and that the present FIR is counter blast to be used as a pressure tactics against the petitioner and his daughter, but I find that the said alleged marital discord

and the matrimonial litigation are not of much significance while deciding this petition.

In a citation **State Represented by the C.B.I. vs. Anil Sharma, 1997(4) RCR (Criminal) 268**, it was observed that *custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail.*

At this stage, question to be decided is that as to whether pre-arrest bail is to be granted or not. The truthfulness of the allegations in the FIR is not to be determined by holding a mini trial and the allegations are to be taken as such. Pre-arrest bail is a relief which is not to be granted just at the asking of an accused in routine manner but in exceptional circumstances. Its purpose is not to screen the criminals from legal action and to save them from custodial interrogation which being mere elicitation-oriented, result in the extraction of the important information from mouth of a criminal. Custodial interrogation of the petitioner is necessary for proper and effective investigation. In case such custodial interrogation is denied to the investigating agency, that will leave many loose ends and loopholes, adversely affecting the investigation which is uncalled for. Thus finding no merit in the petition, the same stands dismissed.

22.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**