

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

(1)

**Crl. Misc. No.M-35002 of 2017 (O&M)
Date of Decision: November 21, 2017**

Ryan Augustine Pinto

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

(2)

Crl. Misc. No.M-35003 of 2017 (O&M)

Dr. Augustine Francis Pinto and another

.....PETITIONER(s).

VERSUS

Central Bureau of Investigation.

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep S. Cheema, Advocate;
Mr. R.S. Rai, Senior Advocate with
Mr. Anurag Arora and Mr. Sandeep Kapoor, Advocates
for the petitioner (s).

Mr. Deepak Sabharwal, Addl.A.G. Haryana with
Mr. Ashish Yadav, Addl. A.G. Haryana.

Mr. Sumeet Goel, Advocate
Retainer counsel for CBI with
Sub Inspector Abhimanyu Singh.

Mr. Sushil K. Tekriwal, Advocate with
Mr. Anupam Singla and Mr. Ankit Aggarwal, Advocates
for the complainant.

SURINDER GUPTA, J.(Oral)

arise from the same FIR. Petitioners in both the petitions have sought their pre-arrest bail in case FIR No.250 dated 08.09.2017 registered for the offences punishable under Sections 302 Indian Penal Code, 25 of Arms Act, 75 Juvenile justice (Care and Protection of Children) Act, 2005 (for short-J.J.Act) and Section 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 (added later on) at Police Station Bhondsi.

2. Pradyumn Thakur aged 7 years a student of Ryan International School, Bhondsi, along with his sister Vidhi was left at school by their father (complainant) at 8.00 A.M. on 08.09.2017. At 8.10 A.M., he received a phone call of his wife, who asked the complainant to immediately call Anju Dudeja madam. When he contacted Anju Dudeja madam, she told him that his son had a cut on the neck and is profusely bleeding. She asked him to reach Badshahpur hospital, where he was being taken. Complainant along with his wife left for Badshahpur Hospital but on the way, he received a call from Anju Madam that they were taking the child to Artemis Hospital. On reaching there, he found that there was a cut on the right side of his neck up to the ear and he was in emergency ward. The doctor informed the complainant that Pradyumn had died.

3. On receipt of information, police recorded FIR No.250 dated 08.09.2017 at Police Station Bhondsi (Gurugram) and arrested Ashok Kumar son of Ami Chand on the same day.

4. Vide State notification dated 17.09.2017 and notification issued by Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi dated 22.09.2017, investigation of the case was transferred to Central Bureau of Investigation (CBI), which

re-registered the aforesaid FIR as case bearing No.RC 8(S)/2017/SC-III/New Delhi on 22.09.2017, which is reproduction of the FIR recorded by Police Station Bhondsi.

5. After hearing arguments on 07.10.2017, both the petitions were adjourned for 05.12.2017 and the investigating agency was directed to submit further report relating to the investigation on that day. Operative part of order dated 07.10.2017 reads as follows:-

“Consequently, petitioners in both the petitions are directed to join the investigation by CBI on receipt of notice in this regard. In the event of their arrest being required, they will be allowed interim bail in case bearing FIR No. RC 8(S)/2017/SC-III/New Delhi dated 22.09.2017 for the offences punishable under Sections 302 read with Section 34 IPC, 25 of Arms Act, 75 J.J.Act, and 12 of POCSO Act, 2012 (earlier FIR No.250 dated 08.09.2017 registered at Police Station Bhondsi, Gurugram) till next date on their furnishing bonds to the satisfaction of Investigating Agency. However, they shall abide by the terms and conditions as envisaged under Section 438(2)(i) to (iv) Cr.P.C. failing which they shall loose the benefit of interim bail allowed to them.”

6. Complainant-Barun Chandra Thakur (father of the deceased) filed Special Leave Petitions (Criminal) No.8044-8055 of 2017 before Hon'ble Apex Court, challenging the grant of interim relief to the petitioners, which were disposed of by Hon'ble Apex Court vide order dated 06.11.2017, which reads as follows:-

“Considering the rival submissions, we are only inclined to request the High Court to dispose of the bail application of the petitioner within a period of ten days hence. We are inclined to make such a request as the

High Court has granted interim protection to the petitioner under Section 438 CrI.P.C. for a long period.

With the aforesaid request, the special leave petitions stand disposed of.”

7. On the applications of complainant bearing Nos. CRM-36297-298 and 36302-303 of 2017, the petitions were preponed for 17.11.2017.

8. I have heard learned counsel for the petitioners, complainant and learned retainer counsel for CBI.

9. Learned counsel for the petitioners submit that after the filing of petitions, vide order dated 28.09.2017, these were adjourned for 07.10.2017 and in the meantime, arrest of the petitioners was stayed till the next date with direction that “if required, they may be called and allowed to join the investigation”. CBI did not feel any necessity to call the petitioners to join the investigation till 07.10.2017. Thereafter, arguments were heard at length on 07.10.2017 and keeping in view the fact that CBI has absolutely no material evidence against the petitioners, these petitions were adjourned for 05.12.2017 with direction “to the petitioners to join the investigation by CBI on receipt of notice in this regard.” Till date, CBI has not felt any need to call the petitioners to join the investigation. The main stress of the investigating agency is on the point that there was some negligence on the part of school authority and lapse in security of students. Petitioners Dr. Augustine Francis Pinto aged 73 years and his wife Mrs. Grace Pinto, aged 62 years are living in Mumbai. They are trustees of Saint Xavier's Education Trust, which is running around 54 schools throughout India. The trustees are never directly involved in administration of each school and they take only the policy decision. CBI was looking into the

conspiracy angle for the murder of the boy in the school but has not found any evidence regarding involvement of the petitioners. Merely on suspicion, a person cannot be arrested and put behind the bars when he in no manner is related to an offence. Similar is the status of petitioner Ryan Augustine Pinto, who has no concern with the management of the school. The reply filed by the CBI is very cautious and guarded, wherein they nowhere say that the petitioners are required in this case. CBI is opposing the bail applications of the petitioners only with the plea that there is possibility of their being member of the conspiracy behind the murder of a student, however, section 120-B IPC has not been added in this case so far. Earlier, a bus conductor (Ashok) was arrested by Haryana Police in the case, who is alleged to have confessed the commission of crime. Now, the CBI has arrested a student of the school against whom it has collected the evidence for committing the crime. The case and plea of the CBI against the petitioners is same as it was on the date of passing of order dated 07.10.2017 and no new plea or evidence has come on file of investigating agency connecting the petitioners with the crime in this case. The school authority and management is fully cooperating with CBI in the matter and intends to help the investigating agency to reach a conclusion regarding the commission of murder of a student in the school.

10. Learned retainer counsel for CBI has argued that the crime in this case relates to murder of a young student of the school. The investigation is at a crucial stage, as such, grant of anticipatory bail to the petitioners will hamper the further investigation. He, however, admits that the petitioners have not been called to join the investigation so far and

giving reason for it, he submits that the investigating agency is presently concentrating on main accused and on the basis of evidence collected by it, a student of the school has been arrested as main accused. The other arguments of learned counsel for CBI are the same which were put forth at the time of hearing arguments on 07.10.2017.

11. Learned counsel for the complainant has argued that the crime in this case is very heinous and gruesome and petitioners, who are trustees/office bearers of school cannot be allowed anticipatory bail. He further submits that this petition is not maintainable as it has been directly filed in this Court. Even otherwise, the petitioners are claiming relief only in the FIR recorded by the Haryana Police and not in the FIR registered by the CBI. After the murder of a student of Ryan International School, Bhondsi, a bus conductor was arrested on the same day. Gurgaon and Sohna Bar Associations had passed the resolution on 09.09.2017 resolving not to defend the accused in this case. However, the same were withdrawn. The petitioners had earlier approached Mumbai High Court seeking stay of their arrest so that they may approach Hon'ble Apex Court but instead of going to Apex Court, they filed petitions in this Court. Gurgaon Bar Association had withdrawn its resolution dated 09.09.2017 on 15.09.2017 and the petitioners have approached this Court on 18.09.2017 i.e. after the withdrawal of the resolution by the Bar Association, Gurgaon. Now, the petitioners should be directed to approach Gurgaon Courts seeking anticipatory bail. The investigation is now in the hands of CBI and is at crucial stage. New facts are coming to notice every day and CBI has now arrested a minor boy, who is student of Ryan International School, Bhondsi

as main accused for murdering Pradyumn. The investigating agency has to see as to why the school authorities wiped out material evidence after the occurrence and what is the complicity of the petitioners in this case. More facts regarding murder of the students may come to the fore including the conspiracy angle and the petitioners who were CEO and trustees of the school, are not entitled to grant of benefit of anticipatory bail.

12. After hearing arguments on 17.11.2017, CBI was directed to file status report/case diary about the present status of investigation. Today when the case was taken up, learned retainer counsel for CBI has submitted that he has not to place on file any status report. However, he has produced status report in sealed cover for perusal of this Court. He further submits that he has not to add anything to the arguments already addressed in this case.

13. Learned counsel for the complainant and learned CBI counsel have reiterated some pleas during course of their arguments, which have already been discussed at length in order dated 07.10.2017. Their objections regarding maintainability of the petitions and other such objections have already been dealt with in order dated 07.10.2017 and I find no reason to again discuss the same in this order. Observations regarding objection of learned CBI and complainant's counsel in order dated 07.10.2017 are reproduced as follows:-

“Firstly, I take preliminary objections raised by learned CBI counsel. This petition is dated 15.09.2017 and the copy of this petition was supplied in the office of Advocate General, Haryana on 18.09.2017 after it was accepted by the registry on 17.09.2017. It is not disputed that the incident had taken place within the jurisdiction of

*Gurugram and Bar Associations at Gurgaon and Sohna have passed Resolutions dated 09.09.2017, requesting its members to abstain from appearing on behalf of accused in this case. Admittedly, that resolution was later on withdrawn and this fact was disclosed before the Hon'ble Supreme Court during hearing of Writ Petition (Criminal) No.139 of 2017 on 18.09.2017. In case of **Chhajju Ram Godara Versus State of Haryana (supra)**, a Co-ordinate Bench of this Court has observed that the petition seeking anticipatory bail should not be filed directly in this Court until or unless, there is specific reason for it. This fact is not disputed that Section 438 Cr.P.C. gives concurrent powers to this Court as well as Sessions Court. Though the normal course should be to first approach the Court of Sessions but there is no bar in entertaining the application for anticipatory bail by this Court in appropriate cases. It was so observed in case of **Dharambir Badhana Vs. State of Haryana, 2013 (14) RCR (Criminal) 333** by a Co-ordinate Bench of this Court.*

*A Full Bench of Allahabad High Court in case of **Omkar Nath Agrawal and others Vs. State 1976 Cri.L.J. 1142** has made observations to this effect in para 13 as follows:-*

“13. We, therefore, answer the question under reference in the affirmative and hold that a bail application under Section 438, Code of Criminal Procedure, 1973 may be moved, in the High Court without the applicant taking recourse to the Court of Session.”

*A Full Bench of Himachal Pradesh High Court in case of **Mohan Lal and Others Vs. Prem Chand and Others 1980 AIR (H.P.) 36** has also responded to a reference made to it by observing that a person can apply*

for anticipatory bail to the High Court directly without knocking jurisdiction of the Sessions Court.

In this case, petitioners have given specific reasons as to why they have not approached Courts at Gurugram, as such the objection to this effect raised by learned counsel for CBI has no basis.

The second objection raised by learned counsel for CBI is that the bail has not been sought in the FIR registered by CBI rather it has been sought in the FIR registered at Police Station Bhondsi, Distt. Gurugram.

It is admitted that the investigation of this case was transferred to CBI by the State of Haryana with the approval of Central Government on 22.09.2017 and on the same day, CBI re-registered the aforesaid FIR as its case bearing No. RC 8(S)/2017/SC-III/New Delhi. The entire allegations which find mention in the FIR registered at Police Station Bhondsi were reproduced in the FIR registered by the CBI. On the application of petitioners, CBI was impleaded as party in this case. It is not the case of CBI that any new allegation has been raised in the FIR registered by it, as such these bail applications are not bad on this score as well.

The next preliminary objection raised by learned counsel for CBI is that High Court of Mumbai has already declined the anticipatory bail application filed by the petitioners. In support of his contention, he has referred to order dated 14.09.2017 passed by Single Bench in the High Court of Judicature at Mumbai, wherein application filed before the Hon'ble High Court has been referred as anticipatory bail application. On perusal of copy of petition filed before the Hon'ble High Court of Judicature at Mumbai (which was produced during the course of arguments), this fact has not been

disputed that in fact the petitioners have moved application seeking transit bail, so that they may approach the appropriate judicial authority for filing anticipatory bail application. This objection, as such is also without any basis and rejected.”

14. From the submissions of learned retainer counsel for CBI, it appears that against petitioners investigation of the case and the evidence collected by investigating agency stand at the same stage as it was on 07.10.2017. While allowing interim relief to the petitioners on 28.09.2017, it was ordered that if required, petitioners will be called and joined in investigation of the case, however, till 07.10.2017, they were never called to join the investigation. Vide order dated 07.10.2017, petitioners in both the petitions were directed to join the investigation on receipt of notice in this regard and it has been fairly conceded that no notice calling upon the petitioners to join investigation have been issued till date.

15. Learned counsel for CBI, while opposing the petitions, has referred to the plea raised in para 6, 7, 9 of preliminary submissions and para 12 of para-wise reply filed in CRM-M-35003-2017, which read as follows:-

“6. That as per the School Magazine of Ryan International School, Petitioner Dr. Augustine Francis Pinto is the Chairman of the Ryan International Group of Institutions and Mrs. Grace Pinto is the Managing Director of Ryan International Group of Institutions. Their anticipatory bail applications have already been dismissed by the Hon'ble Bombay High Court, Mumbai.

7. That as per the “Deed of the St. Xavier's Education Trust”, the Control/management/Operation/Supervision/Establishment/Development of all the schools

of this Group including Ryan International School, Sohna Road, Bhondsi, Gurugram, where a seven years old boy was brutally murdered on 08.09.2017, are totally under the control of Dr. Augustine Francis Pinto and Mrs. Grace Pinto and others.

9. That the possibility of these two petitioners being members of the conspiracy behind the murder of Master Pradhyuman in the washroom of Ryan International School, Sohna Road, Bhondsi, Gurugram on 08.09.2017 and its abetment, destruction of the evidence by anyone cannot be ruled out as all these persons are within the ambit of investigation and they are to be dealt by the law at par with other accused.

12. That the contentions of petitioners at paragraph 12 of the petition are opposed by the prosecution on the following grounds:-

(i) That the CBI has taken up the investigation of the case and the investigation of this case is still pending at crucial stage. Larger conspiracy behind the murder of a seven year old boy is yet to be unearthed.

(ii) That the petitioners may tamper with the evidence, intimidate the witnesses and help the accused who are yet to be arrested and may even abscond which would hamper the course of investigation.

(iii) That the possibility of them being members of the conspiracy behind the murder of Master Pradhyuman in the washroom of Ryan International School, Sohna Road, Bhondsi, Gurugram on 08.09.2017 and its abetment, destruction of the evidence by them cannot be ruled out as all these persons are within the ambit of investigation and they are to be dealt by the

law at par with other accused.

(iv) That CBI has taken up the investigation of this case on 22.09.2017, the records of the school management and those of the head office of Ryan International Group of Institutions have not been collected by CBI and the investigation is at preliminary stage.

(v) That CBI is yet to examine and analyze the role of the petitioners in this case particularly with regard to various lapses and careless attitude of the school management which led to the brutal murder of a seven years old boy.

(vi) That this case has become almost a national issue and has attracted the attention of every parent and elder in the country and has caused deep anguish and resentment in people across the nation.

(vii) That it is also learnt that more than 60 students have already applied for 'Transfer Certificates' for leaving this school after murder of Master Pradyuman Thakur which is clearly indicating the things not being in place as per the safety guidelines.

(viii) That it is further worth mentioning here that it was observed during visit of CBI to the school that boundary wall of the school has been constructed now only.”

16. In para 9 of preliminary submissions, it has again been submitted that there is possibility of petitioners being member of conspiracy behind the crime in this case. In para 12 of the para-wise reply, it has been stated that CBI has yet to examine and analyze the role of petitioners in this case. Similar pleas have also been raised in the reply filed in petition CRM-

M-35002-2017.

17. The question, which arise for consideration at this stage is as to whether CBI intends to arrest petitioners without any any evidence of their complicity in the crime only on the basis of possibilities and probabilities. The answer to this question will be in negative. It is not disputed that in the investigation conducted so far, there is not even a pointer of involvement of petitioners in the crime in this case. Some lapse or negligence on the part of school management or even of the trustees or other office bearer of the school if found at any point of time, may not be a pointer towards their complicity in commission of murder of a school student, until and unless there is some substantial evidence of their involvement in this crime. While passing order dated 07.10.2017, it was observed that CBI “is working on the theory of possibilities and trying to analyze certain facts and evidence collected so far in the matter”, as such, it will be appropriate to give time to investigating agency to analyze the evidence before it, look into the role of petitioners in this case and apprise this Court with further progress in the investigation and evidence against petitioners collected during investigation. Till date, status of investigation against the petitioners is at the same stage as it was on the date of passing of order dated 07.10.2017. It is a case where a seven years old student of the school was brutally murdered in the school. It is not only an unfortunate incident but also a gruesome and heinous crime and the State Government thought it appropriate to hand over the investigation of the case to CBI, a premier investigating agency of the country. As admitted by learned counsel representing CBI, petitioners have not ever been called for joining the

investigation and CBI has arrested a student of the school as main accused for murder of Pradyumn and is concentrating on his role in committing the crime. It has not come on record that this crime was committed by the conductor (Ashok), who was arrested by the police on the day of occurrence or the student arrested by the CBI in this case, in conspiracy with the petitioners or he had ever any contact with them. Petitioners Dr. Augustine Francis Pinto and Mrs. Grace Pinto (in CRM-M-35003-2017) are trustees of Saint Xavier's Education Trust, which is running several school in the country. The status of petitioner Ryan Augustine Pinto (in CRM-M-35002-2017) with regard to the management of the school in which crime was committed, is yet to be ascertained. It will also be a point of investigation for the Investigating Agency as to whether the petitioners, while living in Mumbai, are directly responsible for any lapse of the Administration in the school.

18. As a result of my above discussion, I find merits in both the petitions and the same are allowed. Order dated 07.10.2017 granting interim bail to the petitioners is made absolute, till the presentation of challan, subject to the following terms:-

- (i) that the petitioners shall make themselves available for interrogation by the investigating agency as and when required;
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to investigating agency;
- (iii) that the petitioners shall not leave India without the prior permission of the Court.

(iv) that the petitioners will seek regular bail on the presentation of challan in Court.

(SURINDER GUPTA)
JUDGE

November 21, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***