

201.

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

CRM-M-4250-2016 (O&M)

Date of decision:15.09.2017

HARKESH SINGH

... Petitioner

versus

STATE OF PUNJAB & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ramneek Vasudeva, Advocate,
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab,
for respondent No.1.

Mr. Vijay Lath, Advocate,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

CRM-22972-2017

Prayer in this application filed under Section 482 Cr.P.C. is for placing on record true typed copies/photocopies/translated copies of documents Annexures P-6 to P-10 and also for exemption from filing the certified copies of these annexures.

For the reasons stated in the application, same is allowed and the documents Annexures P-6 to P-10 are taken on record, subject to all just exceptions.

CRM-M-4250-2016

Present is a second petition filed under Section 438 Cr.P.C.

for grant of anticipatory bail to the petitioner in FIR No.233 dated

23.12.2014 under Section 379 IPC, registered at Police Station City Rupnagar, District Rupnagar.

The earlier petition i.e. CRM-M-11131-2015 filed by the petitioner under Section 438 Cr.P.C. was dismissed as withdrawn on 08.04.2015 with the following order:-

“After arguing for sometime, learned counsel for the petitioner withdraws the instant petition.

Dismissed as withdrawn.”

The aforesaid FIR was registered on the basis of a complaint submitted by Additional Deputy Commissioner (Development)-cum-Chief Executive Officer, Zila Parishad, Rupnagar, against the petitioner-Harkesh Singh, who is the Contractor and Gurcharan Dass, Accountant and other accused as detailed in the FIR. As per the FIR, the accused have cut trees on the Ropar-Morinda road which belongs to Zila Parishad, Rupnagar. On this road, a total of 106 trees were auctioned by the Zila Parishad on 22.03.2011. The petitioner being the highest bidder for a sum of ₹2,20,000/- was allowed to cut 106 trees, but under the garb of said auction, the petitioner i.e. Contractor had cut 148 trees in excess to the permitted trees and have cut 106 more trees. On account of this excess and illegal cutting of trees, the Zila Parishad has suffered huge financial loss. So far as the allegation against the co-accused Gurcharan Dass is concerned, he was holding substantive post of Accountant, but was also allowed the additional charge of Arboriculture.

Learned counsel for the petitioner contends that so far as issue of maintainability of second petition seeking anticipatory bail is concerned, it is based on the report giving details of felled trees on Ropar-Morinda road. Though in the present petition, a reference has been made regarding the statements of employees, who have deposed that the petitioner has not cut the trees and the said information was sought by the petitioner by way of RTI. This fact was incorporated at the time when the present petition was filed and during the pendency of present petition, the said report was obtained by the petitioner which is annexed as Annexure P-9. According to the report dated 03.12.2012 (Annexure P-9), on the basis of physical checking of wooden logs/pieces, the Deputy Chief Executive Officer, Zila Parishad has recommended to forward the matter to the Forest Department for the actual assessment of trees and further to bring to the notice of Zila Parishad the discrepancies/deficiencies, if any.

Learned counsel states that since the aforesaid details were not furnished at the time of registration of FIR, the department cannot held the petitioner responsible for the cutting of excess trees. He has further argued that though the petitioner has other legal grounds to support his case including the argument that under Section 468 (2) (c) of Cr.P.C., the entire procedure including the filing of FIR is hit by the principle of limitation, but at this stage, he is not pressing this argument with liberty to raise before the trial Court.

Vider order dated 18.02.2016 passed by this Court, the petitioner was granted interim bail and following order was passed:

“Learned counsel for the respondents pray for time to file reply alongwith certain documents.

Adjourned to 18.3.2016.

Till the next date, in the event of arrest, the petitioner shall be released on bail on furnishing adequate bail and surety bonds to the satisfaction of the Arresting/ Investigating Officer/Trial Court. Petitioner shall appear before the I.O., as and when called upon for investigation and shall also be bound by all the conditions stipulated in Section 438(2) Cr.P.C.

To be shown in the urgent list.”

Pursuant to aforesaid order, petitioner has joined the investigation and as directed by this Court on 20.09.2016, the investigation in the case is being carried out by the DSP Headquarter under the direct supervision of SSP. He has further argued that since he is not assailing the very FIR on merits at this stage as the present petition is confined only for grant of anticipatory bail under Section 438 Cr.P.C. Further, as directed by this Court vide order dated 08.09.2017, the petitioner is ready to plant 148 saplings i.e. the disputed number of trees and to further continue to take care of said saplings for a period of four years with all sincerity which will otherwise facilitate the environment as well. He has filed affidavit dated 15.09.2017 undertaking to plant 148 saplings and to take care them for four years, which is taken on record. But such saplings should not be considered as confession of his guilt.

Learned counsel for the respondent-complainant though has stated that because of excess cutting of trees by the petitioner, the

department has been put to a loss of ₹8,33,000/-, however, the same is again subject to adjudication by the trial Court when such loss if caused to the Zila Parishad, can be assessed.

Learned State counsel, on instructions from ASI Jaswinder Singh, states that the petitioner has joined investigation and only recovery of amount i.e. loss caused to the complainant is required to be effected from him.

I have heard learned counsel for the parties.

There is no dispute that the petitioner has joined the investigation. As regards the maintainability of second petition seeking quashing of anticipatory bail is concerned, this Court finds that there is a justification for the same for the reasons that: (i) the earlier petition was dismissed as withdrawn though after arguing for some time, meaning thereby, it was not dismissed on merits; (ii) the fresh ground for filing the present anticipatory bail application is that Narinder Singh Daroga, an employee of Arboriculture Department, has given a statement before the police that the said trees were never cut down by the petitioner. He has submitted a report about the felled trees on Ropar-Morinda road obtained through RTI, which has been placed on record as Annexure P-9 dated 03.12.2012 along with CRM-22972-2017.

Considering the fact that the earlier application seeking anticipatory bail was dismissed as withdrawn and was not dismissed on merits, coupled with the fact that he has highlighted the report about

the felling of trees submitted by the Deputy CEO, Zila Parishad, and above all, the affidavit of the petitioner that he undertakes to plant 148 saplings and to take care of such saplings for a period of four years with all sincerity, this Court finds that the order dated 18.02.2016 whereby the petitioner was granted anticipatory bail deserves to be made absolute.

Accordingly, leaving the parties to lead their respective evidence during trial, but for the limited purpose of grant of anticipatory bail, it is directed that the petitioner shall plant 148 saplings within two weeks on the road either at Ropar-Morinda from where excess trees beyond the auctioned trees were cut or at any other place as suggested by the Zila Parishad. Of course, the same shall be within the jurisdiction of Zila Parishad, Ropar.

It is made clear that merely because the petitioner has been asked to plant saplings, does not mean that this Court has held the petitioner guilty and such concession is only in order to facilitate the environment. In addition to that, the petitioner-Gurcharan Dass (in CRM-M-12949-2017) has also come forward to show his magnanimity and has offered to extend all possible sincere help, so that the trees planted by the petitioner-Harkesh Singh are grown and maintained properly. The petitioner shall abide the terms and conditions of the affidavit so filed.

In view of above, present petition is allowed and interim directions issued by this Court vide order dated 18.02.2016 are made

absolute.

However, the petitioner shall continue to join investigation as and when required to do so and shall abide by the terms and conditions, as laid down under Section 438(2) Cr.P.C.

It is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

15.09.2017
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.