

Sr. No.101+125

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

**CRM-37734-2018 in/and
CRM-M-36330-2018(O&M)
Date of decision:23.10.2018**

Naveen and another

.....Petitioners

versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Shailender Singh Momi, Advocate
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Mr. Dishant D.Tuteja, Advocate
for the Complainant.

Rajbir Sehrawat, J(Oral)

CRM-37734-2018

Allowed as prayed for.

Additional Joint Affidavit of Naveen s/o Dharam Singh is taken
on record.

CRM-M-36330-2018

Present petition has been filed seeking anticipatory bail in FIR
No.105, dated 02.05.2018 registered under Sections 306/34 IPC at Police
Station Cheeka, District Kaithal.

FIR in the case had come up on the statement of one Surender
Singh S/o Bhim Singh, with the allegation that his younger brother namely,

Balwinder Singh was married with petitioner No.2 on 04.03.2018. It was alleged that the character of petitioner No.2 was not good; regarding which his brother had told the Complainant about 5-7 days after the marriage, specifically disclosing that she was having illicit relations with Naveen; the petitioner No.1. This was also disclosed to him that an attempt was made to make her understand, however, she did not mend the ways. Rather; she extended threat to the brother of the Complainant; that if he would stop her from talking to Naveen then she would get him killed by asking Naveen to do so. It was further alleged that on 01.05.2018 at about 1:00 pm; petitioner No.2 went away from the matrimonial home alongwith petitioner No.1; after quarreling with the brother of the Complainant. Resultantly, brother of the Complainant had told him that petitioner No.2 had disgraced the family. It was further confided by the brother that he would not be able to show his face in the society. Feeling threatened and embarrassed by his wife going away with somebody else, the brother of the Complainant consumed poisonous substance; which resulted in his death. On account of this incident the above said FIR under Sections 306/34 IPC was registered against the present petitioners.

In this FIR, earlier also the petitioners had approached this Court seeking anticipatory bail through CRM-M-22121-2018. Vide Order dated 07.06.2018 passed in CRM-M-22121-2018, the petitioners were granted interim protection with a direction that they will co-operate in investigation. However, ultimately; the State Counsel had submitted before this Court that the petitioners had not co-operated during the investigation. Therefore, the above said petition seeking anticipatory bail was dismissed by this Court vide Order dated 16.07.2018.

Feeling aggrieved of the Order dated 16.07.2018 passed by this Court, petitioners approached the Hon'ble Supreme Court vide SLP No.6439/2018. However, that SLP was also got dismissed as withdrawn by the petitioners; with liberty to approach this Court for explaining their stand regarding the alleged non-cooperation of the petitioners in the investigation. Consequently, the present petition has been filed by the petitioners.

In present petition, once again; the petitioners were granted interim protection vide Order dated 06.09.2018 by passing the following order:-

“Learned counsel for the State submits that earlier, neither questions were answered correctly nor the recovery had been got affected by the petitioners. Therefore, it was stated before the Court that petitioners were not cooperating in investigation. This Court does not have any reason to disbelieve the version of the Investigating Officer. However, it would not be unjustified to grant one more opportunity to the petitioners to join the investigation.

Adjourned to 22.10.2018.

The petitioners are directed to appear before the Investigating Officer on or before 10.09.2018.

Meanwhile, in the event of arrest, the petitioners be released on interim bail subject to their furnishing personal bonds/surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation further also as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.”

On previous date, the State counsel had filed reply by way of

affidavit of Parmod Kumar HPS, Deputy Superintendent of Police Guhla (Kaithal). The reply filed by the State again reiterated the fact that the petitioners had, again, not cooperated in the investigation. It was stated that neither they have answered the questions put by the investigating officer in their right earnest nor the petitioners have got effected any recovery, as was required by the investigating officer. Along with the reply, the questions which were asked to the petitioners and the answers given by them, separately, are also attached.

Confronted with the reply filed by the State counsel, learned counsel for the petitioners has submitted that he had already filed an application, giving explanation to the questions which were asked by the investigating officer; explaining therein that the petitioners have answered all the questions quite honestly. However, that application was not listed by the Registry. Therefore, the case was fixed for today; with the direction to the Registry to list the application filed by the petitioners alongwith the main case. That's how the case is fixed before this Court today.

Reiterating his submissions, learned counsel for the petitioners has submitted that the petitioners have honestly answered all the questions. It is further contended that whatever knowledge the petitioners had got; they have already replied to the investigating officer. They have nothing more to add to their answers which they have already given to the investigating officer. Learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court rendered in **2011(1)SCC 694; Siddharam Satlingappa Mhetre vs. State of Maharashtra and others** to contend that the criteria for consideration of anticipatory bail has been delineated by the Hon'ble Supreme Court in Para No.122 of the judgment and it has further

been explained in Para No.129 of the said judgment. Accordingly, it is contended by the counsel for the petitioners that the investigating officer has not recorded any reason for arresting the petitioners, nor any such reasons have been disclosed in the reply filed by the State. To support his contentions, learned counsel for the petitioners has further relied upon the judgment of the Hon'ble Supreme Court rendered in **2008(4)R.C.R. (Criminal)370;Jonathan Nitin Brady vs. State of West Bengal.**

On the other hand, learned counsel for the State has reiterated that the petitioners have not cooperated in the investigation. It is further contended that; to facilitate the petitioners in answering the questions in their right earnest, the police had asked specific questions to the petitioners so as to elicit the attending circumstances; which are required to be crystalised to arrive at a conclusion qua the offence alleged in the FIR. However, while answering some of the most relevant questions, the petitioners have given irrelevant answers and while answering some other directly relevant questions the petitioners have totally evaded, virtually refusing to answer the questions; at all. Therefore, it is contended by State counsel that in this situation, it would not be possible for the investigating officer to come to any conclusion qua the offence involved in this case; whether the petitioners are involved in it or not. It is further contended that since the petitioners have not answered the questions in their right earnest and honestly, therefore, the custodial interrogation of the petitioners is duly required.

Learned counsel for the Complainant has also submitted that the petitioners have positively conspired, threatened and pressurised the deceased to commit suicide; so as to clear way for their enjoyment. It is

further contended that the deceased had ever made a statement before the father of petitioner No.2; that he was pressurised and threatened to clear way for the petitioners; by committing suicide, failing which petitioner No.2 would get him killed. Therefore, it is argued that the petitioners have positively participated in the crime and have abetted the suicide by the deceased. It is further contended by the counsel that the circumstances; under which the deceased committed suicide; are known only to the present petitioners, besides the deceased himself. Since the Investigating officer has even now found that the petitioners are still not cooperating, therefore, the petitioners do not deserve any concession of anticipatory bail. Hence prayer for dismissal of the petition is made. Learned counsel for the Complainant has relied upon the judgment passed by this Court in **CRM-M-41195-2018** titled as **Ashwani Kumar vs. State of Punjab; decided on 19.09.2018** to contend that the emphasis in consideration of anticipatory bail is to see whether the protection order would hamper the free and fair investigation or not. The merits of the case would be relevant only to ascertain the scope of investigation; which is required in a case.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the State counsel as well as the arguments raised by the learned counsel for the Complainant. Although learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of **Siddharam Satlingappa Mhetre(supra)** to contend that the accused has right to life and liberty and that right should not be permitted to be hampered lightly, however, the same judgment has clarified that while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely,

that the liberty of a citizen is not unduly curtailed, while at the same time, keep in mind that no prejudice is caused to the free and fair investigation; to be conducted by the investigating officer. In number of judgments, the Hon'ble Supreme Court has already held that custodial interrogation is qualitatively and quantitatively different than the investigation, when the accused is investigated; while he is having a sense of protection of the Court Order.

So far as the right of the accused is concerned, no doubt the accused, like any other citizen; has a right to life and liberty. However, this right of a citizen is subject to being curtailed in accordance with the procedure established by law. In case of investigation of an offence, the normal procedure established by law, for curtailing the liberty of an individual as prescribed in Cr.P.C. is that the investigating officer can arrest an accused even without warrant. Not only he can arrest without warrant, rather, it is his duty, as a public servant to arrest an accused, if he apprehends that any cognizable offence has been committed by him. But, lest the investigating officer should misuse his power, the Court has been granted an extra ordinary power, by way of Section 438 Cr.P.C. to protect the accused against such misuse. However, while exercising this power, the Court has to see only if it would be justified to prevent the police to investigate the case by taking the accused in custody. For the purpose of exercising of power under Section 438 Cr.P.C., the Court is not to see the merits of the case; from the point of view as to the possibility of ultimate conviction or acquittal of accused. The possibility of acquittal or conviction on merits of the case; would be decided only at the time of trial. Hence; the Court would interfere to curtail the power of investigating

officer, which is the ordinary procedure prescribed for curtailing the liberty of an individual, only if the Court is prima facie convinced of some extenuating circumstances in the case leading, predominantly, towards the innocence of the accused, on the face of it.

Considered in view of the above legal position, this Court finds that the petitioners do not appear to have answered the questions; put by the investigating officer; quite honestly. State counsel is justified in arguing that the petitioners have been evasive in answering the relevant questions, which have direct bearing upon the attending circumstances; under which the deceased ended his life. Needless to say, that in the incident only three persons can be said to have some knowledge; whether it were the petitioners who instigated the deceased to commit the suicide. The deceased himself is no more in this world to disclose the facts and circumstances which might have led him to commit the suicide. Besides him, the petitioners are the only persons; who are alleged to be knowing the intricate details of the discussions and happenings; which had taken place between the deceased and the petitioners. If the petitioners are granted protection, even against questioning by the investigating officer to decipher these circumstances, this definitely is going to adversely affect and seriously prejudice the investigation by the police. In that situation, the investigation of the case would be a mere formality, where the investigating officer would not have any option but to say that he is not able to find out any cogent reason either for or against the accused. This, by any means, would not be any investigation; as contemplated and required by the Code of Criminal Procedure.

So far as the argument of learned counsel for the petitioners,

that no reasons have been recorded for arresting the petitioners, is concerned, suffices it to say, that the same would be required to be done only when the investigating officer decides to arrest the petitioners. That stage has not even arrived so far. As and when the investigating officer decides to arrest the petitioners, he would be required to comply with all the requirements of arresting an accused.

Otherwise also, keeping in view the totality, of the facts and circumstances, this Court finds no extenuating circumstances in favour of the petitioners, so as to exercise its extra-ordinary power; conferred upon Court under Section 438 Cr.P.C. Resultantly, the present petition is dismissed.

Needless to say that any observations made herein above, would not be taken as an expression on merit; for any other purpose; whatsoever.

23rd October, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*