

S.No.213

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

CRM-M-44477 of 2018 (O&M)

Date of Decision:31.10.2018

Rafik @ MukkiPetitioner

Vs.

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Ms. Rosi, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.85 dated 16.03.2018 registered under Sections 5/13(2), 17 of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (Sections 186, 332, 307 of IPC, 23 of Arms Act, 1959, 3(2) PDPP Act, 1984 and 11,59,60,1960 of Animal Cruelty Act added later on) at Police Station Tauru, District Nuh.

The FIR in the present case had come on the statement of one ASI Balbir Singh; in which it was stated that the said ASI along with the police party; in the government vehicle; was present on the Tauru bypass, Village Bhogipur; while on duty regarding prevention of crime and law and order. At that time, one Mohit son of Om Prakash met the Police and gave the information that one Aarif, the present petitioner - Mukki son of Hussaina, Tarif @ Hodal son of Deenu and Rahul son of Akbar are indulging in cow slaughter. Today also, a vehicle of TATA 407 make, cream colour is coming in which weak and feeble type of cows have been loaded by the above said persons from Village Kangraka; to take them to Rajasthan.

If naka is raised, they can be arrested.

On the above said information, the police party started checking vehicles. Finding this information to be reliable, the police raised a naka/ barrier. The Police saw the above said TATA 407 vehicle coming. On seeing the police naka, the accused threw two cows out of the vehicle. When the police party tried to catch them then accomplish of the accused started throwing stones upon the police party. All the three accused fired upon the Police party and ran away from the spot.

During investigating, one Pehlu was arrested. He disclosed the name of all the above-mentioned persons. Upon disclosure of Pehlu, the above named Aarif and Rahul were arrested. The co-accused Rahul made the statement that he and the present petitioner fired upon the police party. That is how the name of the petitioner has come up in the present case.

While arguing the case, learned counsel for the petitioner has submitted that with similar allegations, the co-accused has already been granted anticipatory bail by the Court below. It is further contended that the Police have concocted the story. Still further, the counsel for the petitioner contends that there is no other case against the petitioner.

On the other hand, learned counsel for the State submits that the name of the petitioner has surfaced in the statement of the eye witness ASI Balbir Singh who was present on the spot. Besides this, the co-accused of the petitioner, namely, Rahul son of Akbar has named the petitioner in his disclosure statements, as the person who had fired upon the police party along with the above said Rahul. Hence, counsel for the State contends that the petitioner is directly involved in the incident of firing upon the police

party. Recovery of the weapon of offence is yet to be made. It is further contended that the allegation against the co-accused Aarif was also that he had fired upon the Police Party. He was granted regular bail pending trial and not the anticipatory bail. The other co-accused Rahul is also enlarged on regular bail pending trial; after the recovery was got effected from him. They are facing the trial. However, it is not disputed that there is no other case against the petitioner. Learned State Counsel also submits that statements of two independent witnesses were also recorded by the Police; who had stated against the petitioner in the same terms as the Police officials and the co-accused Rahul has stated. Therefore, the petitioner cannot be granted anticipatory bail because it would hamper the investigation.

Having heard learned counsel for the parties, this Court finds that there are serious allegations against the petitioner qua having fired upon the police party, besides allegations of socially sensitive offence of cow slaughter.

No doubt that Court has been granted power under Section 438 Cr.P.C for releasing a person on anticipatory bail, so as to save him from harassment at the hands of Police, however, the normal procedure in case of investigation of the case is that the Investigating Officer has the power to arrest even without warrant. Power of the Court under Section 438 Cr.P.C is only an extra-ordinary power. Power under Section 438 Cr.P.C is to be exercised only if the investigation being done by the Police is not unduly hampered. The Hon'ble Supreme Court has also held in number of cases that the investigation of an accused, when the accused is

investigated without the protection of the Court order; is qualitatively and quantitatively different than the one which is conducted when the accused is having the sense of protection of the Court order. Therefore, while considering for anticipatory bail, the Court has to see if there is any extenuating circumstance leading, pre-dominantly, to the innocence of the accused and at the same time also has to see whether the investigation by the Police would be unduly hampered, in case power under Section 438 Cr.P.C is exercised by the Court.

In the facts and circumstances of the present case, this Court does not find any extenuating circumstances in favour of the petitioner, sufficient to prevent the Police from investigating the case in its right earnest. This Court finds substance in the argument of the learned counsel for the State that recovery from the accused is yet to be effected.

If at this stage, the petitioner is granted protection against custodial interrogation, this would unduly hamper the investigation by the Police.

In view of the above, finding no merit in the present petition, the same is dismissed.

October 31, 2018**renu****(RAJBIR SEHRAWAT)****JUDGE**

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No