

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

CRM-M No.45197 of 2018

Date of Decision: 12.11.2018

Hardeep Sharma

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.D. Sharma, Advocate
for the petitioner.

Mr. D.K. Mittal, D.A.G., Haryana.

DAYA CHAUDHARY, J.

Petitioner-Hardeep Sharma has approached this Court for grant of anticipatory bail to him in case FIR No.523 dated 22.09.2018 registered under Sections 389, 384 read with Section 34 of the IPC at Police Station City Hansi, District Hisar.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he was not involved. The only allegation against the petitioner is that he collected some amount on instructions of one Dholia Gurjar. No allegation has been made in the FIR that the petitioner ever demanded any money and the allegations are totally vague. The complaint was lodged at the instance of Ex. MC Krishan as he himself did not pay the amount. The story made up by the prosecution is not worth believing and nothing is to be recovered from the petitioner and hence, his custodial interrogation is not required. The petitioner is ready to

join investigation.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that not only the specific allegations are there but the specific role has been attributed to the petitioner. He further submits that not only the amount was collected but the same was duly received and conversation of the petitioner with other persons was also got recorded. Serious allegations of extortion of amount by putting fear in the mind of the complainant are there.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file including the order of dismissal of bail.

As per allegations in the FIR, on 03.08.2018 at about 10.00 p.m, an altercation took place between one Vijay as well as Renu and her sons. In that quarrel, the leg of Vijay was broken. The persons of the neighbour had quarreled with Vijay and he moved a complaint in the Police Station, Hansi stating therein that some women, namely, Sarita wife of unknown and her daughters as well as Renu wife of unknown and her son Rahul along with his friends were involved in the bad activities. On raising objection by Vijay, his leg was broken. On making complaint by neighbourers, the police took said persons in the police station. Ex. MC Krishan reached at the spot and contacted the police. It was told that a case under Section 376 IPC has been registered against one Ramesh, whereas, no case was registered against him. He came back and on the next day, he met SHO, who was known to Ex.MC Krishan. He made a call to SHO and to Randhir and came to know that no case was registered. ASI Randhir was telling that he would register a case against Ramesh. Dholia Gurjar asked

ASI Randhir that when Ramesh had not committed any offence then why the FIR was being registered against him. ASI Randhir abused Ramesh. A call was received by Krishan Ex. M.C from Dholiya Gurjar stating that the police was demanding Rs.14 lacs for disposing of the case. On the next day, Ex. MC Krishan talked to the police officials and it was stated that the case had already been sent to Superintendent of Police. Ex. MC Krishan came to Dholiya Gurjar, who asked him to give Rs.10 lacs by Ramesh. On 06.03.2018, an amount of Rs.2 lacs was given to Dholiya Gurjar after taking the money from Ex. M.C Krishan and Sunil. On 08.03.2018, the remaining amount of Rs.6 lacs was demanded by Hardeep Sharma (the present petitioner). Subsequently, it came to the notice that no case was registered. Those persons including the petitioner extorted the money from the complainant under the fear of implication in a false case of rape. On the basis of that complaint, the present FIR was registered.

Not only the specific allegations regarding demanding and receiving of the amount are there but a specific role has been attributed to the petitioner. The concession of anticipatory bail can be granted by considering the nature of allegations as well as the role attributed to the petitioner. In the present case, the specific allegations have been levelled and specific role has been attributed to the petitioner.

It is a well settled law that anticipatory bail cannot be claimed as a matter of right but it is a concession and the same is to be granted by considering various factors. For grant of anticipatory bail, the nature, gravity of offence as well as role of the accused is to be seen. There are certain factors, which are to be considered while granting bail under Section 438 Cr.P.C. Hon'ble the Apex Court in a judgment rendered in ***Bhadresh***

Bipinbhai Sheth Vs. State of Gujarat and another 2015 (8) JT 125 has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial

interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 Cr.P.C. the limitations mentioned in Section 437 Cr.P.C. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Cr.P.C. to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till

the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr.P.C. should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly

comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of

the prosecution, in the normal course of events, the accused is entitled to an order of bail.

No doubt no flexible guidelines or straightjacket formula can be provided for grant or refusal of anticipatory bail and no attempt should be made to provide rigid and inflexible guidelines in this respect. However, grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case.

By considering the allegations against the petitioner and role played by him, I am of the view that anticipatory bail is a relief, which is not to be granted in a routine manner but under the exceptional circumstances.

By considering the allegations levelled and the role of the petitioner, there is no reason to grant anticipatory bail. Accordingly, the present petition being devoid of any merit is, hereby, dismissed.

(DAYA CHAUDHARY)
JUDGE

12.11.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No