

Sr. No.101

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

CRM-M-9115-2019

Date of decision:15.03.2019

Arshad

.....Petitioner

versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Arjun Atri, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a second petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.635, dated 29.09.2018 under Sections 3/13(1), 8/13(3) of the Haryana Gauvanch Sanrakshan and Gausamvardhan Act 2015, registered at Police Station Nuh, District Mewat, Haryana.

The first bail application filed by the petitioner for seeking anticipatory bail in the same matter was got dismissed as withdrawn on 05.12.2018, when the petitioner had realized after arguments, that the Court was not inclined to grant the relief of anticipatory bail. But the second petition for the same purpose has been filed by mentioning the fact that after dismissal of the earlier petition, the co-accused of the petitioner has been granted regular bail.

Facts leading to the present petition are that the police party was present at the bus stand of village Bajhera on patrolling. At that point of time one secret informant informed the police party that Lallu son of Deena, the co-accused of the present petitioner and the present petitioner

both are involved in the business of cow slaughter. Even on the day of lodging of the FIR, they had slaughtered a cow and were selling the beef on the chowk of co-accused Lallu's house. It was further informed that if the raid is conducted then the co-accused could be apprehended with the beef of the slaughtered cow. The police found the information to be worth believing. Accordingly the raid was conducted by the police party, by taking the secret informant alongwith them.

On reaching the house of Lallu, one person was seeing cutting the cow with knife and the other was sitting nearby with a weighing machine, alongwith fresh beef and he was quoting the price in loud voice at Rs.60 per kg of beef. The person cutting the cow was Lallu and he was also calling the other person with the name of Arshad i.e. the present petitioner. On seeing the police party, the accused started running away. The police party chased them. However, the accused slipped from the place by taking advantage of the narrow streets and densely populated area. From the spot the police recovered 60-70 kg of beef with cow's mouth skin and tale and one iron kinfe. One weighing machine along with one wooden alter and an axe were also recovered from the place; which was used for slaughtering the cow. The same was taken into possession.

Subsequently, the co-accused of the petitioner Lallu was arrested. Co-accused of the petitioner also disclosed the name of the petitioner as being the person who was with him and was involved in the slaughtering of the cow and selling of the beef.

While arguing the case, learned counsel for the petitioner has submitted that the case against the petitioner is false and concocted. Police are wrongly implicating the petitioner in the crime because they were

demanding money; which the petitioner did not pay. It is further submitted that the discloser statement of the co-accused is fabricated because the same co-accused had already given an affidavit on 30.01.2019 in favour of the petitioner. It is further submitted that this affidavit is also signed by the Sarpanch of the village. However, despite that the police went on to implicate the petitioner in the crime.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

In view of the facts of the present case, this Court does not find any mitigating circumstances leading towards the ex-facie innocence of the petitioner qua the allegations levelled against him. His name is directly

mentioned in the FIR itself. Even the slaughtered cow, beef and the items used for slaughtering the cow have been recovered from the spot. The house was also located on the identification of the secret informant. Hence there is hardly any scope for prima facie doubt qua the story propounded by the prosecution. Hence this Court finds itself unable to exercise powers under Section 438 Cr.P.C in favour of the petitioner to grant him the anticipatory bail. Otherwise also, in considered view of this Court, if the petitioner is granted interim protection at this stage, that would preclude the police from carrying out free and fair investigation and the police would not be in a position to unearth true dimensions of the crime.

Although similar petition filed by the petitioner earlier already stands dismissed, but now counsel for the petitioner has relied upon the relief granted to the co-accused Lallu. However, it deserves to be noted that the co-accused has been released on bail pending trial, after he was duly interrogated by the police in custody. During investigation, even the co-accused has disclosed the name of the petitioner as one of the participant in the crime. Hence even the earlier affidavit allegedly sworn by the co-accused cannot be taken on its face value. All the facts will be clear only after due investigation of the case, which may require the police custody of the petitioner.

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

15th March, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*