

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12801-2019 (O&M)
Date of decision: 24.07.2019

Ashok Santhaliya

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Randeep Singh Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Jasjit Singh Bedi, Sr. Advocate with
Mr. Lovekirat Singh Chahal, Advocate
for respondent No.2-complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the order dated 30.01.2019 (Annexure P-4) passed by the trial Court, vide which an application filed by the complainant under Section 193 of the Code of Criminal Procedure (for short 'Cr.P.C.'), to summon the petitioner (placed in column No.2 of the report under Section 173 Cr.P.C.), was allowed and he was directed to face the trial in FIR No.691 dated 14.09.2017 under

Sections 306, 34 of the Indian Penal Code (for short 'IPC'), registered at Police Station Mujessar, Faridabad.

Brief facts of the case are that the aforesaid FIR was registered at the instance of Pushpa Devi wife of deceased Mahender K. Gupta, with the allegations that on 14.09.2017, in the morning, her husband came back from the house of his sister Rita and went to sleep. When he woke up, he informed her that he has money transaction with petitioner Ashok Santhaliya, owner of Namu Forging Aggarwal and on that account, he used to remain tensed, as 1-2 days ago, Ashok Santhaliya had sent a notice from Kolkata. The complainant's husband was having a licensed revolver. When the complainant was busy in performing pooja, her husband was sitting in a room and was writing something on a page, which he tore from the diary and then shot himself on head with his licensed revolver. Then she along with her relatives took him to the hospital, where he was declared dead.

Later she found a suicide note, the contents of the suicide note read as under: -

“Ashok Santhalia s/o Late Duli Chand Santhalia is responsible for my death who has made my life hell since July 2005 and because of him I came from Bengal to Faridabad in the year 2006. Narendra Aggarwal owner of Namu Forging Pvt. Ltd. is also responsible for my death who after coaxing and lying to me has taken around Rs.65,00,000/- from me.

Sd/- M Gupta

Ashok Santhalia has also made the life hell of my sister and

brothers and my family since 2005

Sd/- M Gupta Sd/- M Gupta/14.9.2017”

Learned senior counsel for the petitioner submits that though name of the petitioner was mentioned in the suicide note, but no incriminating material came on record during the investigation and therefore, the petitioner was kept in column No.2 and accused Narendra Aggarwal is facing the trial. It is further submitted that the petitioner is a director and proprietor of 'Bhagwati Eco Care Pvt. Ltd.' and since this company had to take money from deceased M.K. Gupta, the petitioner was authorized to take action against him vide resolution dated 08.01.2016. Similarly, petitioner being director of 'Manavta Vinimay Company Ltd.', was authorized by way of resolution dated 04.01.2016 to take action against deceased M.K. Gupta to recover money.

Learned senior counsel has further submitted that thereafter, two FIRs were registered i.e. FIR No.145 dated 30.05.2016 under Sections 420, 406, 384, 389, 506 IPC at Police Station Jamudia, District Vardhman (W.B.) and another FIR No.198 dated 04.07.2017 under Sections 406, 420, 506 IPC, at Police Station Baubazar, Kolkata against the deceased. Learned senior counsel has argued that in connection with the same, the police has issued notice under Section 41-A Cr.P.C. to the deceased, which is allegedly referred to in the suicide note. It is further submitted that in fact, a huge amount was outstanding against the deceased towards the two companies, wherein the petitioner is a director and therefore, he has been falsely named in the suicide note.

Learned senior counsel has next argued that though in the suicide note, it is specifically mentioned that deceased had to recover Rs.65.00 lacs from Narendra Aggarwal, however, no such amount was mentioned against the petitioner, which shows that in fact, it is the petitioner's company, which was to recover the amount. It is also argued that even brother of the deceased, who recorded statement under Section 161 Cr.P.C., could not give any evidence/statement of account or the details of the outstanding amount, to show that the petitioner had taken the amount from the deceased.

Learned senior counsel has further argued that during the investigation, an SIT was constituted and on the basis of their report, while submitting the challan under Section 173 (2) Cr.P.C., the petitioner was kept in column No.2, as in fact, deceased owe money towards the petitioner's company and therefore, he has been falsely implicated by the complainant. It is further submitted that the trial Court has not adopted a proper procedure and has decided the application filed by the prosecution under Section 193 Cr.P.C., in a manner, as if it is an application under Section 319 Cr.P.C.

Learned State counsel has relied upon the reply filed by way of affidavit of Assistant Commissioner of Police, Mujesar, District Faridabad, wherein, in para No.8, following reply is given: -

“That the deceased had good relations with the petitioner earlier and petitioner was a director of Bhagwati Sponge Pvt. Ltd. in the year 2003 having 4.5% shares. Deceased was also appointed as Director. However, the petitioner resigned. The

petitioner alleged that he had got sanctioned a loan of Rs.1.10 crores to the deceased from M/s Manvta Vinimay Pvt. Ltd. in the year 2014 and the deceased had returned only Rs.7 lacs. A sum of Rs.1.03 crore is still due against the deceased. Similarly, a loan of Rs.90 lacs was got issued to the deceased from M/s Bhagwati Mines & Manufacturing Pvt. Ltd. and the deceased had returned Rs.67 lacs but Rs.23 lacs are still due. The petitioner got registered case FIR No.145 dated 30.06.2016 under Sections 420, 406, 384, 389, 506 IPC, at Jamuria Police Station district Burdwan (West Bengal) for not paying loan of Rs.23 lacs alongwith interest. Similarly, another case FIR No.198 dated 04.07.2017 u/s 406, 420, 506 IPC was got registered by the petitioner at Police Station Bau Bazar, Kolkata for recovery of Rs.1.07 crores against the deceased. In FIR No.198 of 2017, a notice u/s 41-A Cr.P.C. was sent by the Investigating Officer on 11.09.2017 and the deceased committed suicide on 14.09.2017. Copies of FIR No.145/2016 and 198/2017 are enclosed as Annexure R-1 & R-2.”

Learned State counsel has thus submitted that the petitioner was found innocent and therefore, he was kept in column No.2 in the challan. It is further stated that as per the reply, during the investigation conducted and verified by senior officers, no incriminating substance was found against the petitioner, as no case of abetment to commit suicide was made out against him. It is further submitted that statement of Sanjay Gupta,

brother of deceased recorded under Section 161 Cr.P.C. is subject to his examination before the Court, as he could not produce any document regarding any financial claim and also could not produce any original document in favour of his claim. It is lastly argued that the petitioner owe no amount to deceased M.K. Gupta.

Learned senior counsel, in support of his contents, has referred to para No.5 of the reply filed by the State, which reads as under: -

“... There is detailed statement of Sanjay Gupta brother of the deceased u/s 161 Cr.P.C. besides his name in the suicide note. The detailed statement of Sanjay Gupta brother of the deceased is subject to examination because he never produced in favour of his financial claim of West Bengal neither shown any original document in favour of his claim.”

Learned senior counsel for the complainant has opposed the prayer on the ground that in fact, a suicide note, which is in the form of dying declaration, is admissible in the evidence in which the petitioner along with Narendra Aggarwal were held responsible for abetting the deceased to commit suicide. It is submitted that the anticipatory bail application of the petitioner was dismissed by the Sessions Judge, Faridabad on 11.10.2017 and thereafter, he filed anticipatory bail petition before this Court, which was dismissed as withdrawn and without arresting him, the police joined him in investigation and exonerated him. Learned senior counsel has referred to the order dated 11.10.2017 passed by the Sessions Judge, Faridabad, to submit that the petitioner has placed on record a copy

of the agreement dated 08.01.2014, according to which deceased M.K. Gupta has been paid an amount of Rs.2.00 crores, in the form of bank drafts to put an end to the monetary dispute between two and therefore, contention of the petitioner that in fact, he has given the loan of Rs.2.00 crores to deceased M.K. Gupta is not proved.

For a reference, operative part of this agreement dated 08.01.2014 reads as under: -

“Today on the 8th January, 2014, Ashok Kumar Santhalia (now petitioner), S/O – Lt. Dulichandra Santhalia, R/O – Jamuria, West Bengal (First Party) AND Mahendra Kumar Gupta (since deceased), S/O – Lt. Sitaram Gupta, R/O- Faridabad (Second Party) made an agreement. Under this agreement Ashok Kumar Santhalia gave an amount of Rs.2 crore by Bank Draft to Mahendra Kumar Gupta, in order to do away with all disputes between him and Mahendra Kumar Gupta and his brother Sanjay Gupta, so that all the claims and counter claims concerning shares may be attempted to be settled between the two parties to this agreement. Mahendra Gupta will solve the issue with 4 months from the date of the agreement.

Thereafter if Mahendra Kumar Gupta reverts from the terms of agreement then the entire amount of Rs.2,25,000,00/- (Rupees Two Crores and Twenty Five lakhs) shall be given to Ashok Kumar Santhalia by Mahendra Kumar Gupta. Both parties

have made this agreement out of their free will and consent at Bankebihari Temple campus.

Witnesses:

1. -Sd-

First Party

2. -Sd-

-Sd-

Second Party

-Sd-”

Learned senior counsel for the complainant has relied upon **Venkatesh Waran and another Vs. Singravel Yarn Traders, 2010 (4) RCR (Crl.) 426** to submit that in a petition under Section 482 Cr.P.C., the High Court cannot look into the disputed question of fact, and dismissed a petition in which accused was seeking quashing of the complaint on the ground that he is not partner in the firm and is not responsible for the conduct of business, while praying for quashing of the complaint under Section 138 of N.I. Act.

Learned senior counsel has further relied upon **Vijayander Kumar and others Vs. State of Rajasthan and another, 2014 (1) RCR (Crl.) 983**, wherein the Hon'ble Supreme Court has held that while filing a petition for quashing of FIR, the accused cannot be permitted to produce material documents, as these can be proved only in defence at the appropriate stage. Learned senior counsel has also relied upon **Dharam Pal and others Vs. State of Haryana and another, 2013 (3) RCR (Crl.) 787** to submit that the Court of Sessions, after commitment of the case, can take cognizance of offence, by exercising the original jurisdiction under Section 193 Cr.P.c. and can summon a person as accused.

In reply, learned senior counsel for the petitioner has referred to **Bajinder Singh and another Vs. State of Punjab, 2015 (3) RCR (Crl.) 950**, wherein this Court has held as under: -

*“.....In the case in hand, since petitioners have been summoned to face trial for offence under section 302 IPC, on their appearance before the court, they have a reasonable apprehension that they would be taken in custody. Thus, plea for anticipatory bail is not misconceived. Article 21 of the Constitution guarantees the right to life and liberty to its citizens. Criminal law derives its source and sustenance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution (see **Vikas Vs. State of Rajasthan's** case (supra) paras 13, 14). Thus, such additional accused who do not intend to defy law and are ready to face trial, their plea for anticipatory bail can be considered, subject to the principles already laid down in **Gurbaksh Singh Sibbia's** case (supra). Though Section 438 Cr.P.C. does not confer a right on such accused to be granted discretionary relief of anticipatory bail, their plea would deserve consideration within the available parameters. If appearance of additional accused can be secured and the court is satisfied that they would cooperate during the proceedings, their plea for anticipatory bail can be accepted. It also needs to be emphasized that at the stage of Section 319 Cr.P.C., some*

deposition of prosecution witness(s) is before the court and on consideration of same additional accused are summoned. However summoning under section 193 Cr.P.C. is only on the basis of material accompanying the report under section 173 Cr.P.C. On perusal of same, additional accused are arraigned. Thus, such accused are entitled to pray for anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.

In view of these observations, I allow the present petition. Vide interim order dated 29.5.2015, it was directed that in case petitioners surrender before the concerned court during pendency of this petition, they would be admitted to interim bail. Stand of the State counsel is that petitioners have put in appearance and furnished bail bonds. Prayer for anticipatory bail is, thus, accepted and order dated 29.5.2015 is hereby made absolute, subject to the conditions envisaged by Section 438 (2) Cr.P.C.”

Learned senior counsel has thus argued that in view of the report of SIT, the petitioner is kept in column No.2 in the challan and therefore, the petitioner may be granted the concession of interim bail in view of changed circumstances, despite the fact that his anticipatory bail application was dismissed by the Sessions Judge during the stage of investigation and his anticipatory bail petition was dismissed as withdrawn before this Court.

After hearing learned counsel for the parties, I find no ground to interfere in the well reasoned order passed by the trial Court.

The Hon'ble Supreme Court in **Dharam Pal's** case (supra) and **Balveer Singh and another Vs. State of Rajasthan and another, 2016 (2) RCR (Crl.) 1006** has held that the Sessions Court, on committal of a case by the Magistrate, has jurisdiction under Section 193 Cr.P.C., to take cognizance of the offence against a person, whose complicity in the case, would be evident from the material available on record, even without recording the evidence and may summon the person(s) shown in column No.2 of the police report to stand trial along with those, who have already been named therein.

Therefore, I find no illegality in the impugned order summoning the petitioner under Section 193 Cr.P.C. However, considering the fact that anticipatory bail of the petitioner was dismissed during the stage of investigation and the anticipatory bail petition filed by him was dismissed as withdrawn before this Court and thereafter, a SIT was constituted and during the investigation, the petitioner was found innocent and his name was kept in Column No.2 of the police report, therefore, in view of affidavit filed by ACP, Faridabad and in view of changed circumstances, while relying on **Bajinder Singh's** case (supra) and considering the fact that the petitioner has a reasonable apprehension, if he appears before the trial Court in pursuance of the summoning order, he may be taken in custody, it is directed that in case the petitioner surrenders before the trial Court within a period of 15 days from today, he shall be

admitted to bail subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court.

With the aforesaid observations, present petition is dismissed.

24.07.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No