

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

Sr. No.211

CRM-M-12157-2020

Date of decision: 07.10.2020

Yogesh Kumar

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

Mr. Davinder Singh, Advocate
for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

Case taken up through video conferencing.

The present petition is the second one through which the petitioner seeks the grant of anticipatory bail in FIR No.388 dated 13.11.2019 registered under Sections 306, 34 IPC (Section 420 IPC added lateron) at Police Station Civil Line, Sonipat, District Sonipat.

The facts in brief which are required to be noticed to adjudicate upon the instant petition are that on 13.11.2019 Om Parkash committed suicide. He left behind a suicide note as per which he being in debt had entered into an agreement with the petitioner and co-accused Naresh Kumar Nasa for selling to them his property. It was further agreed between the parties that the bank loan standing in the name of the deceased would be got transferred by the petitioner and his co-accused in their names and the

deceased shall be paid out of the balance amount. However, the petitioner and his co-accused backed out of their promise and knowing that the deceased was in debt and being hounded by the bank started to blackmail and harass him by offering to purchase the property at a much lesser price than which had been agreed to between them. The deceased repeatedly requested the petitioner and his co-accused to honour their commitment but to no avail. This led him into a corner and when he could not take it anymore he ended his life.

The petitioner knocked the doors of this Court through **CRM-M-52364-2019 - Yogesh Kumar versus State of Haryana** through which he sought anticipatory bail. His co-accused prayed for the same relief through **CRM-M-469-2020 - Naresh Kumar Nasa versus State of Haryana**. After notice, the petition filed by Naresh Kumar Nasa was dismissed by this Court on 13.01.2020. The operative part of such order reads as under:-

“After hearing the counsel for the parties, I find no ground to grant the concession of anticipatory bail to the petitioner for the following reasons:-

(a) In the agreement to sell dated 01.04.2019, the sale deed was settled as Rs.1 crore 58 lacs and it was stated that Rs.3.30 lacs and Rs.4.70 lacs was transferred by way of RTGS in favour of IIFL Home Finance Loan Limited. A perusal of the sale deed, it was subsequently executed on 22.05.2019 also incorporates these two entries apart from a sum of Rs.50 lacs deposited in favour of IIFL Home Finance Loan Limited by way of a bankers cheque. By adding of these 03 entries, the sale consideration was shown as Rs.58 lacs, though, it

is own case of the petitioner that as per the agreement to sell dated 09.03.2019, the sale consideration was Rs.84 lacs, therefore, the agreement to sell dated 09.03.2019 set up by the petitioner and the co-accused Yogesh Bajaj, seems to be suspicious and requires scientific investigation.

(b) The accused after purchasing the house of deceased after deducting their 14 lacs never made balance payment and the deceased had no knowledge that after execution of sale deed, the accused will harass and humiliate him for 06 months despite knowing that he had no money to carry on his livelihood. This consistent behaviour of the accused abetted him to commit suicide.

(c) As per the agreement to sell dated 09.03.2019 set up by the petitioner, the amount of Rs.84 lacs was settled as a total consideration and Rs.2 lacs was paid as earnest money. The first page of this agreement, where the details of total sale consideration and the earnest money, is given is not signed either by the vendor or the vendee.

(d) The petitioner and the co-accused are specifically named in the suicide note and there are specific allegation of causing harassment, humiliation on account of not making the payment despite the fact that the deceased was facing great financial crunch which forced him to sell his house and the petitioner and the coaccused never made the balance payment as it is not the case of the petitioner that they had made any further payment even as per their own agreement to sell.

(e) Mere fact that the sale deed was not challenged by the deceased will not absolve them as the

deceased was in need of money and despite execution of the sale deed, the accused did not pay him balance amount as per the agreement to sell dated 01.04.2019. It is common practice that sale deeds are executed on circle rates fixed by District Collector to evade stamp duty and deceased who was facing financial crunch. Therefore, it is not a fact to be considered, at this stage.

In view of the above and considering the serious allegations leveled against the petitioner in the FIR, in the suicide note and on the basis of the other documents, the custodial investigation of the petitioner is required, the present petition is dismissed.”

Thereafter, on 05.02.2020, the petitioner's petition for anticipatory bail came up for final disposal on which date, in view of the reasons given by this Court on 13.01.2020 to dismiss the anticipatory bail plea of the co-accused- Naresh Kumar Nasa, the petitioner's petition was also dismissed. The operative part of the order passed by this Court in the petitioner's case reads as under:-

“After hearing learned counsel for the parties and considering on the serious allegations against the petitioner, as noticed in the aforesaid order dated 13.01.2020, I find no ground to grant concession of anticipatory bail to the petitioner.

Accordingly, the present is hereby dismissed.”

Co-accused Naresh Kumar Nasa, whose role is alleged to be identical to that of the petitioner challenged the dismissal of his bail petition before the Supreme Court through **Special Leave to Appeal (Crl.) No(s).**

1019-2020 – Naresh Kumar Nasa versus State of Haryana and another,

which was dismissed on 13.02.2020 by passing of this following order:-

“The special leave petition is dismissed.

We, however, observe that in event the petitioner surrenders within two weeks from today and make an application for regular bail, the same shall be considered and expeditiously disposed of by the concerned court.

Pending applications, if any, stand disposed of.”

Apparently, after seeing the above fate of the challenge made by his co-accused before the Supreme Court the petitioner chose to accept the dismissal of his bail plea by this Court.

In these circumstances, finding their arrest to be imminent, the petitioner and his co-accused, rather than surrendering before the investigating agency, then approached the deceased's wife and entered into a “compromise” with her. An affidavit of hers' was also procured and on the basis of these developments the petitioner has again approached this Court through the instant petition seeking anticipatory bail.

Learned counsel for the petitioner submitted that he does not press the petitioner's plea for anticipatory bail on the merits of the matter and seeks relief for the petitioner only on the strength of the afore-referred compromise between the parties and the affidavit of the complainant. According to him, once the matter had been compromised, there was no reason to put the petitioner behind bars. In support he relied on the following judgments:-

- (1) **CRM-M-37957-2015 - Harmesh Singh and another vs. State of Punjab and another**, decided on 09.02.2017 – (Punjab and Haryana High Court).
- (2) **CRM-M-22442-2016 - Atma Singh and others vs. State of Punjab and others**, decided on 19.08.2016 – (Punjab and Haryana High

Court).

**(3) Yogesh Gupta vs. State NCT of Delhi, 2015(31) R.C.R. (Criminal)
203 – (Delhi High Court).**

Learned State counsel denied knowledge of any compromise having taken place between the parties and opposed the grant of anticipatory bail to the petitioner as according to him the compromise and the affidavit, if any, were a result of influence exercised by the petitioner and his co-accused over the deceased's wife and that the same would not bring back the deceased Om Parkash.

Learned counsel appearing for the complainant admitted to the compromise having taken place between the parties but could not divulge the consideration and the basis thereof.

In the suicide note left behind by Om Parkash he has specifically attributed the committing of his suicide to the blackmail and harassment by the petitioner and his co-accused. The petition for anticipatory bail filed by co-accused-Naresh Kumar was dismissed by this Court on 13.01.2020 and since the role attributed to the petitioner was identical to that of his co-accused, the petitioner's first petition for anticipatory bail was also rejected. Naresh Kumar's challenge to the dismissal of his bail petition was rejected by the Supreme Court and since the petitioner and Naresh Kumar's alleged role was identical, the petitioner apprehending the same fate as Naresh Kumar's petition, chose not to challenge the dismissal of his anticipatory bail petition by this Court. Thus, on merits, this Court as also the Supreme Court warranted custodial interrogation of the petitioner and his co-accused.

The petitioner's reliance on the compromise between the parties

and the complainant's affidavit to secure his anticipatory bail is misconceived. A compromise between the petitioner and the deceased's wife cannot bring back the deceased. Irrespective of the compromise it is still required to be investigated as to whether Om Parkash's suicide was abetted by the petitioner and his co-accused especially when in his suicide note Om Parkash has specifically attributed his death to the petitioner and his co-accused. Consideration, if any, for the compromise cannot be accepted as blood money for Om Parkash's life. A criminal proceedings based on the taking of human being's life cannot be compromised.

The Supreme Court in **Gulab Das and others vs State of M.P., (2011) 12 Scale 62** and **State of Madhya Pradesh Vs. Kalyan Singh and others (2019) 4 SCC 268** while considering an issue with regard to quashing of criminal proceedings under Section 307 IPC on the basis of a compromise held that the same cannot be done as an offence under Section 307 IPC was very serious and non compoundable. Relevant portion of the judgment in **Kalyan Singh's case (supra)** is as follows: -

“3.1 It is required to be noted that the original Accused was facing the criminal proceedings under Sections 307, 294 read with section 34 of the IPC. It is not in dispute that as per section 20 of the Cr.PC offences under Sections 307, 294 read with section 34 of the IPC are non-compoundable. It is also required to be noted that the allegations in the complaint for the offences under Sections 307, 294 read with section 34 of the IPC are, as such, very serious. It is alleged that the accused fired twice on the complainant by a country-made pistol. From the material on record, it appears that one of the accused persons was reported to be a hardcore

criminal having criminal antecedents. Be that as it may, the fact remains that the accused was facing the criminal proceedings for the offences under Sections 307, 294 read with section 34 of the IPC and that the offences under these sections are not non-compoundable offences and, looking to the serious allegations against the accused, we are of the opinion that the High Court has committed a grave error in quashing the criminal proceedings for the offences under Sections 307, 294 read with section 34 of the IPC solely on the ground that the original Complainant and the accused have settled the dispute. At this stage, the decision of this Court in the case of Gulab Das and Ors. v. State of M.P., 2012(1) R.C.R.(Criminal) 220 : (2011) 12 SCALE 625 is required to be referred to. In the said decision, this Court has specifically observed and held that, despite any settlement between the Complainant on the one hand and the accused on the other, the criminal proceedings for the offences under section 307 of the IPC cannot be quashed, as the offence under Section 307 is a non-compoundable offence. Under the circumstance, the impugned judgment and order passed by the High Court quashing the criminal proceedings against the original Accused for the offences under Sections 307, 294 read with section 34 of the IPC cannot be sustained and the same deserves to be quashed and set aside.”

In **Narinder Singh and others Vs State of Punjab and another, (2014) 6 SCC 466** the Supreme Court culled out the following principles with regard to quashing of criminal proceedings on the basis of compromise:-

- “(I) Power conferred under section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.
- (VII) While deciding whether to exercise its power under section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from

exercising its power under section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 I.P.C. is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 I.P.C. and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

When seen in the light of the above principles enunciated by the Supreme Court an offence under Section 306 IPC which is based on the taking of a human life is found to be an offence which is serious, heinous and a crime against society. It is certainly not private in nature or predominantly of a civil character.

Even otherwise, a perusal of the so called compromise shows that the conditions thereof are tilted only in favour of the petitioner and his co-accused as through the same the complainant gets nothing with the petitioner and his co-accused getting all the benefits. The so called agreement is without any consideration or benefit for the deceased's wife.

The terms and conditions of the compromise are reproduced below:-

“1. That the consent to the execution of

compromise/amicable settlement have been given by both the parties with their free consent and without any pressure from any corner.

2. That all the differences between the parties stand resolved and the parties intend to live peaceful life in future as the parties are residing in neighbourhood.

3. That the first party has agreed and undertaken that she will have no objection if above said FIR No.388 dated 13.11.2019 is ordered to be quashed by the Hon'ble High Court and the first party further undertakes that it will give the necessary consent/affidavit before the Hon'ble High Court for quashing of the FIR.

4. That the second party has agreed and undertaken that they will not claim any damages from the first party because of the registration of the FIR nor they will get any case registered against the first party or her family members.

5. That both the parties and their legal heirs have undertaken that they will not be litigation with each other in future on any account much less on the account of sudden demise of Sh. Om Parkash.

6. That the first party i.e. Smt. Ritu Kumari w/o late Sh. Om Parkash and their legal heir will not claim any kind of compensation.”

The one-sidedness of the so called agreement between the parties is also reflected in the affidavit of the deceased's wife the relevant portion of which reads as under:-

“1. That the matter stands resolved between the deponent and Yogesh Kumar son of Sh. Bhagwan Dass, resident of 183-R, Model Town, Sonapat and Naresh Kumar son of Khalinda Ram, resident of H.No.1991, Sector-12, Sonapat, Haryana. No differences have been left between the deponent

and the abovesaid accused of FIR No.388 of 13/11/2019 lying registered with P.S. Civil Lines Sonipat.

2. That the consent for the compromise has been given by the deponent free of all pressures and without any undue influence. The deponent has even consulted her family members.

3. That the deponent has no objection if the abovesaid FIR No.388 of 13/11/2019 is quashed by the Hon'ble Punjab and Haryana High Court.”

Thus, the afore-quoted affidavit also does not disclose the basis/consideration behind the agreement between the deceased's wife on the one hand and the petitioner and his co-accused on the other. Even on repeated queries by the Court, neither learned counsel for the petitioner nor the learned counsel for the complainant, could divulge the basis or consideration leading to the so called agreement between them. In the light of these facts it cannot be ruled out that the petitioner and his co-accused have influenced the complainant who is the widow of Om Parkash who died under heavy debt and is thus highly vulnerable. This issue also needs to be gone into by the investigating agency.

Harmesh Singh's case (supra) would be of no help to the petitioner as the facts therein are totally distinguishable from the case in hand as in that case plea for anticipatory bail had not been dismissed by this Court and the reasons thereof upheld by the Supreme Court; the contents and consideration as also the facts leading to the compromise in that case are not forthcoming and the afore referred judgments of the Supreme Court have also not been considered therein.

In **Atma Singh's case (surpa)** anticipatory bail was granted to

the petitioners therein on the concession given by the learned State counsel that custodial interrogation of the petitioners therein was not required. Thus, Atma Singh's case is also of no help to the petitioner.

Yogesh Gupta's case (supra) pertains to maintainability of a second anticipatory bail application on the basis of a compromise. The issue of a second anticipatory bail application being maintainable is no longer *res integra* and therefore, after holding the present petition to be maintainable, the same is being dismissed for the reasons given above.

Dismissed.

It is clarified that the above observations have been made only for the limited purpose of deciding the present anticipatory bail application at the time when investigation into the allegations against the petitioner is pending and thus the same would not be construed to be an expression of opinion on the merits of the case.

(DEEPAK SIBAL)
JUDGE

October 07, 2020
Jyoti 1

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