

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

CRM-M-12507-2020(O&M)

Date of decision:-9.10.2020

Kapil Dev

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Sanjeev Kodan, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

Complainant – Ms.Niharika Bhardwaj in person.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by petitioner – Kapil Dev, aged about 35 years, an accused in FIR No.0200 dated 2.5.2020 for the offences under Sections 504, 506, 509 IPC and Section 67 of Information Technology Act, 2000, registered with Police Station Ambala Cantt., District Ambala.

The criminal machinery in this case was set into motion by complainant Ms.Niharika Bhardwaj, a retired Military Officer of the rank of Major, who in the written complaint submitted by her to the police submitted that petitioner/accused Kapil Dev, Admin. of You-Tube

Channel, Saabka Sainik Sangharsh Committee had uploaded a false and doctored video on 15.4.2020 at 7:00 p.m. with an intention to malign her name and reputation; that during the screening of the video, the petitioner/accused had used mobile No.98129-11057. As alleged in the complaint, the petitioner/accused Kapil Dev referred to as 'orator', is a notorious person and through his doctored hate speeches against the Units of Indian Army, attempted to create discontentment and rift. Furthermore, he has been accessing official documents and restricted videos of activities of Army Establishments, which is an act of serious breach of security affecting the national interests. Due to his involvement in such activities, his Twitter account was suspended. In the written complaint, several instances have been mentioned to show that the petitioner/accused had attempted to put complainant to disrepute and passed insulting and uncalled for comments. According to the complainant, such video caused acute mental trauma and harassment to her and immediately after it was uploaded, the complainant received phone calls from her father, father-in-law, her brother and other close relatives, who inquired about the allegations and thereafter expressed their concern about her safety. She sought taking of action against the petitioner/accused.

After registration of the FIR, the investigation in the case started.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions at Ambala by moving an application for grant of pre-arrest bail, which was disposed of by Duty/Additional Sessions Judge, Ambala vide order dated 12.5.2020 inasmuch as it was dismissed. The operative part of the order runs as follows:

6. *The uploading of the video on the You-Tube alongwith pictures and his comments is not disputed by the petitioner/accused. The learned counsel for petitioner/accused could not produce any such document on record which may even prima-facie show that the allegations made by him in the video footage posted by him on You-Tube had any semblance of truth. There is nothing which may even prima-facie show that any such punishment was awarded to three Jawans by the competent Army Authority regarding which the photograph showing them standing on the boxes was posted. There is also nothing which may even prima-facie show that any complaint was lodged by the wife of the Commanding Officer of the Unit as regards non-saluting of her by the Jawans shown in the video footage. The allegations made in the video footage by the petitioner/accused certainly amount to malignment of the dignity and reputation of the complainant, who herself retired as a Major from the Army and happens to be the wife of the Commanding Officer of the Army Unit 502 AD Gp(SP) at Ambala. The petitioner/accused has failed to produce any authentic proof as regards the authenticity and truthfulness of the allegations made by him in the video footage. The custodial interrogation of the petitioner/accused may be required so as to ascertain the genesis of the offence. The posting of false and doctored videos on social media is on the rise. The relief of anticipatory bail is an extra-ordinary*

remedy which can be availed where much hardship is shown to have been caused in the event of arrest.

7. *Keeping in view the nature and gravity of the offence alleged to have been committed by the petitioner/accused and the fact that his custodial interrogation is required to ascertain the genesis of the offence, this Court does not find it a fit case to extent the concession of anticipatory bail to the petitioner/accused at this stage. Consequently this Court does not find any merit in the present application for grant of anticipatory bail moved by the petitioner/accused Kapil Dev and the same is hereby dismissed.*

Feeling dissatisfied, the petitioner has approached this Court for grant of similar relief, which request is being opposed by the State counsel and the complainant.

I have heard learned counsel for the petitioner, learned State counsel and the complainant besides going through the record.

Learned counsel for the petitioner has contended that petitioner has since joined the investigation as per the directions of this Court while granting him interim bail; his mobile phone has been seized by the investigating agency, as such no recovery is to be effected from him and furthermore the petitioner cannot be made to suffer on account of the public comments made by various persons to the video film, which was uploaded on the You-tube. Therefore, anticipatory bail be granted to the petitioner.

Whereas such contentions have been opposed by learned

State counsel and the complainant.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

The allegations against the petitioner are quite grave and serious touching the honour, reputation and social status of the complainant, who had served the nation in capacity of Major in the Indian Army having retired as such and is wife of Commanding Officer of Army Unit. Such type of accused encroaching upon the reputation, prestige, honour and status of even a common man cannot be taken lightly. Though every citizen of India has got a right to express his views in the matter but then freedom of speech does not mean that one can go to the extent of making wild and malicious allegations. Only as a result of custodial interrogation of the petitioner, it can be found out as to how the entire act of uploading the video film on You-Tube was planned and executed, the persons involved in such acts and actual motive behind their doing that. There are grave and serious allegations against the petitioner with regard to gaining access to the secret documents concerning the national security. The matter needs to be investigated from that angle also. Merely because the petitioner has joined the investigation and his mobile phone has been recovered does not mean that he becomes entitled to grant of concession of pre-arrest bail.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation

orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency, that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

9.10.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No