

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

201

**CRM-M-23356-2020 (O&M)
Decided on : 16.09.2020**

Kurban

. . . Petitioner(s)

Versus

State of Haryana and another

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Keshav Pratap Singh, Advocate
for the petitioner(s).

Mr. Apoorv Garg, DAG, Haryana.

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

MANJARI NEHRU KAUL, J. (Oral)

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

CRM-23233-2020

Application is allowed and the reply on behalf of respondent No.2 filed along with the application is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

CRM-M-23356-2020

The petitioner is aggrieved by the order dated 06.08.2020 (Annexure P-7), passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhri, vide which respondent No.2 was extended the extraordinary concession of anticipatory bail in case FIR No. 138, dated 21.07.2020, under Sections 120-B, 342, 384, 388, 389, 506, 379-B IPC, registered at Police Station Bilaspur, District Yamuna Nagar. It has been thus prayed that the impugned order (Annexure P-7) be set aside and the concession of anticipatory bail granted to respondent No.2 – Sunil Jhangra @ Sushil

Kumar, be cancelled.

It has been *inter alia* contended by the learned counsel for the petitioner that while passing the impugned order (Annexure P-7), the Court below gravely erred in granting anticipatory bail to respondent No.2 on the following grounds:-

- I. That there was a delay in lodging of the FIR in question.
- II. That the complainant (petitioner herein) had gone to Gannaur of his own free will.
- III. That no case had been registered against the complainant i.e. the petitioner under Section 376 IPC.
- IV. That there was no medical evidence on record to establish the injuries purportedly received by the petitioner in the occurrence in question.
- V. That as the alleged crime had occurred at Gannaur (Sonepat), the jurisdiction of P.S. Bilaspur (Yamuna Nagar) could not have been invoked by the petitioner/complainant Kurban to register the FIR in question.
- VI. That there was no proof presented by the complainant (petitioner) *qua* the source of Rs. 5.00 lakhs allegedly snatched by the accused from him.

It has been argued that not only the material and evidence collected by the investigating agency prior to the registration of the FIR in question was contrary to the observations made by the trial Court but the trial Court failed to notice and appreciate that it was a pre-planned conspiracy hatched by all the accused, inasmuch as, one of them i.e. accused Kasim firstly lured the petitioner with a lucrative business offer pertaining to his timber business by phoning him up at Bilaspur (Yamuna Nagar). The petitioner/complainant being taken in by the business offer, was again lured

by accused Kasim to accompany him to Gannaur for meeting the timber dealer in connection with the business offer. Thereafter, the petitioner along with accused Kasim drove to Gannaur in a car owned and driven by the petitioner's friend Mehendi Hassan in the evening of 03.07.2020. On way to Gannaur, a blockade was created by the other accused at Kalagarhi fly-over as part of the conspiracy, which led to their car slowing down. Soon thereafter accused Kasim let those accused, who were waiting for their prey, inside the car. Once in the car, the accused threatened Mehendi Hassan to drive as per their directions to the farmhouse at Gannaur belonging to accused Saleem.

Learned counsel for the petitioner has further contended that the trial Court strangely and in a hurried manner straightaway extended the concession of anticipatory bail to respondent No.2 without even directing him to join investigation even though there was *prima facie* enough evidence and material produced before the Court to show his active complicity in the offence in question. It has also been urged by the learned counsel that after the passing of the impugned order (Annexure P-7), respondent No.2 and other accused had been continuously extending threats to the petitioner (complainant) to either withdraw the present complaint against them or in the alternative be prepared for elimination, in which connection he had approached the Superintendent of Police, Yamuna Nagar a number of times as well.

Reply by way of affidavit of Mr. Ashish Chaudhary, HPS, Deputy Superintendent of Police, Bilaspur, on behalf of respondent No.1 (State) has been filed in the Registry. Same is taken on record, subject to all just exceptions.

Learned State counsel has submitted that pursuant to the complaint dated 04th July, 2020, made by the petitioner, a thorough investigation was carried out. During the investigation, it came to light that respondent No.2 in connivance with other accused, after hatching a conspiracy lured the petitioner – Kurban to travel from his village Parbhoul (Bilaspur) to Gannaur along with accused Kasim. The petitioner/complainant thereafter travelled with accused Kasim in a car owned and driven by his friend Mehendi Hassan to Gannaur. On reaching the farmhouse at Gannaur, the petitioner and his friend Mehendi Hassan after being threatened of false implication in a case under Section 376 IPC and other dire consequences, were beaten up by all the accused. A sum of Rs. 30,000/-, which was lying in the wallet of the petitioner/complainant along with his ATM cards and another sum of Rs. 5.00 lakhs, which the petitioner was carrying with him at the time of the alleged occurrence, were forcibly snatched and taken away by the accused after extending threats to both the petitioner and his friend Mehendi Hassan.

The learned State counsel has further submitted that it had come during investigation that all the accused including respondent No.2 after snatching the ATM cards and making the petitioner/complainant divulge the pin numbers of the cards, swiped the ATM cards as many as 40 times between 09:30 P.M. to 06:59 A.M. in the intervening night of 03rd & 4th July, 2020 and withdrew a sum of Rs. 12.00 lakhs. Besides this, the signatures of the petitioner were forcibly obtained by the accused on blank papers along and on two blank cheques and another amount of Rs. 5.30 lakhs in cash snatched by the accused from the petitioner. He has further submitted that a CCTV camera, which was installed in the vicinity, captured

both respondent No.2 and co-accused Saleem swiping the ATM cards of the petitioner and withdrawing money between 09:30 P.M. to 06:59 A.M. in the intervening night of 03rd & 4th July, 2020.

The learned State counsel has further submitted that during investigation, a video, which had been recorded on the mobile phone of one of the accused, had also been recovered, in which the accused were seen threatening and pressurizing the petitioner to give his consent to a fake compromise deed and withdrawal of various amounts of money with an oblique motive to fabricate a false version of a financial dispute between the parties, so that later on, the accused may not be shown to have been involved in any crime, much less, the occurrence which took place at the farmhouse. He has contended that the fake compromise deed was, infact, used by the accused, which they presented before the Police Station at Gannaur on 04th July, 2020. The learned State counsel while referring to the affidavit of DSP, Bilaspur, which has been filed and already on record, apprised this Court that respondent No.2 had been summoned to join investigation subsequent to the grant of anticipatory bail by the Court below, however, he had not been cooperating with the investigating agency and had been giving evasive answers to all the questions put to him. He has, therefore, submitted that in the wake of serious allegations levelled against respondent No.2 and the other accused i.e. Kasim, Isran, Saleem and Bilal Choudhary (whose bails applications under Section 438 Cr.P.C. already stand dismissed vide order dated 24th August, 2020 by the Court of Addl. Sessions Judge, Yamuna Nagar at Jagadhri), the custodial interrogation of respondent No.2 becomes all the more imperative, as there was every likelihood of respondent No.2 tampering with vital evidence

relating to the offences in question.

Learned counsel appearing on behalf of respondent No.2 has strenuously argued and opposed the submissions made by learned counsel for the petitioner as well as the learned State counsel and has urged that in fact, a false case has been registered against respondent No.2 in collusion with the investigating agency. He has contended that the false implication of respondent No.2 in the FIR in question is evident from the fact that there was a delay of almost 18 days in the registration of the FIR from the date of alleged occurrence. He has further submitted that there were business dealings between the parties and the petitioner had himself gone to the farmhouse at Gannaur to clear the outstanding amount, which he owed to accused Saleem. It has been urged that the petitioner/complainant had defaulted in making payment to accused Saleem in respect to a farmhouse, which the former had taken on rent from the latter and another amount of Rs. 10.00 lakhs was owed by the petitioner to the accused Saleem. Resultantly, accused Saleem had moved a complaint to Police Station Gannaur on 03.07.2020 for taking action against the petitioner. However, on the following day i.e. 04.07.2020, the matter was settled between both the petitioner and the accused for which he moved another application with a request to not take any action against the petitioner/complainant. Learned counsel has submitted that the application dated 04.07.2020 bore the signatures of both the petitioner and accused Saleem, which made it abundantly clear that the petitioner had gone to Gannaur of his own accord for settlement of his account with the accused Saleem. He has also contended that the petitioner has come up with self contradictory allegation against the accused including respondent No.2, as on one hand, it was stated

by him in the FIR that he and his friend Mehandi Hassan had accompanied accused Kasim from Bilaspur to Gannaur, but in the same breath, the petitioner alleged in the FIR that both he and his friend Mehandi Hassan had returned back to Bilaspur in their own car. He has further submitted that the Court below rightly observed that the jurisdiction of the Police Station Bilaspur had been wrongly invoked, as no occurrence had taken place in Bilaspur and the alleged occurrence, if any, had taken place at Gannaur.

I have heard learned counsel for the parties and perused the material on record.

Once the concession of bail has been granted, the Court should be weary of cancelling the same and the Court must act with a great deal of circumspection to exercise its judicial discretion. However, if the Court notices that the order granting bail is perverse and against the material on record, there should not be any hesitation in cancelling the bail so granted by way of an arbitrary and wrong exercise of discretion by the Court below.

Before proceeding further, it would be most pertinent to reproduce certain extracts from the impugned order, which are as under:-

“7. Having given my thoughtful consideration to the rival submissions of both sides, I have gone through the papers available on record, on the basis of which, first of all, it came to the notice of this court that as per the contents of FIR, incident had happened with the complainant in the area of Gannaur on 03.07.2020 but present FIR has been registered on 21.07.2020 at Yamuna Nagar. The prosecution agency could not give any justification for causing delay in lodging this FIR which reflects on the part of the prosecution that police agency had registered this FIR after-thought in after connivance with the complainant on the basis of concocted

story.

8. *Secondly, contents of the FIR also reveal that accused no.2 i.e. Kasim was alone upto Dosarka Chowk, Sadhaura with the complainant Kurban in his car bearing registration no. HR-02-1888 because at the instance of this accused, complainant sat in his car for going to Gannaur for purchasing the wood from the contractor known to the accused Kasim. At Dosarka Chowk, Yamuna Nagar, complainant made a telephonic call to his friend Mehendi Hassan son of Lal Deen where he reached with his own car and accused Kasim Left his car at a petrol pump in Dosarka and thereafter, accompanied the complainant and Mehendi Hassan to Gannaur. It means no criminal conspiracy was made by accused no.2 Kasim in the area of Yamuna Nagar as there was no second accused with him.*

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10. *The complainant reached at Gannaur alongwith his friend Mehendi Hassan in the farmhouse of accused no.3 Saleem where they found 10-12 other persons besides the present accused and it is alleged that he had been assaulted by them in that farm house at Gannaur and they had been confined in that farmhouse by accused illegally. Thereafter, they had given threat of involving the complainant in a false case under 376 IPC by calling a lady. That threat was also given by the accused at Gannaur. However, no case under Section 376 IPC has been registered against the complainant. Therefore, this story of the complainant appears to be false. Complainant alleged that he has been assaulted by the accused at Gannaur but there is no medical evidence of his injury to prove this allegation.*

11. *It is alleged that accused snatched his purse which contained ATMs of different. Accused no.1 Isran and accused No.3 Saleem gave beatings to him but again no medical evidence is there. Rather, complainant appears in good health when he was present before the court. Who snatched*

purse, nothing specifically mentioned in the FIR despite the fact that this FIR had been lodged after causing inordinate delay of about 18 ays. Any how that purse had been snatched by the accused in the area of Gannaur.

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13. *It is alleged that accused had taken out from the custody of complainant a cash amount of Rs.5 lakh at Gannaur which he had taken with him while accompanying accused No.2 Kasim from Yamuna Nagar to Gannaur but no proof has been placed on record to prove this fact as to from which source complainant had arranged that cash amount of Rs.5 lakh. Therefore, in the absence of proof, this allegation appears to be false.*

14. *It is alleged that accused no.1 (Isran) and accused no.4 (Sunil Jhangra-present petitioner) and accused no.5 (Bilal Chaudhary) had gone outside the room, where he had been confined, alongwith his ATM Card and Phone. It is alleged that in the area of Samalkha, he checked his mobile phone messages through which he found that accused had taken out Rs.12 lakhs from his account by using his ATM cards apart from cash amount of Rs.30,000/- from his own purse, but all these withdrawals had been taken place in the area of Gannaur. However, these withdrawals may be with consent of complainant because had had to pay rent arrears and another amount of Rs.10 lakhs to Saleem and due to payment of such amount, Saleem did not proceed with his application moved to SHO, Police Station Gannaur against the complainant. However, it is yet to be proved that amount of Rs.12 lakhs had actually been withdrawal by the accused with or without consent of complainant or same had been withdrawn by the complainant himself from his ATM cards but whatever had happened, the same had happened in the area of Gannaur. Accused Saleem had already moved an application for taking legal action against the complainant to SHO, P.S. Gannaur on 03.07.2020 in which complainant*

Kurban had compromised the matter. Consequent upon which, accused Saleem moved another application to SHO, P.S. Gannaur on 04.07.2020 for not taking action against Kurban because the matter has already been compromised. So, it appears to this court that because of those applications moved by accused Saleem against complainant Kurban to the SHO, P.S. Gannaur, complainant Kurban had some grudge. Therefore, afterthrough, he made a concocted story in connivance with the police officers and lodged the present FIR against Saleem and others at Yamuna Nagar after 18 days on the basis of concocted story regarding the incidents which have taken place in the territorial jurisdiction of police Station Gannaur. If complainant's grudges were genuine, he should have moved the application for lodging the FIR against the accused in Police Station Gannaur or soon after registration of this FIR if mistakenly registered at Yamuna Nagar, the police of Yamuna Nagar should have transferred this case to Police Station Gannaur for taking further action in the matter against the accused but police at Yamuna Nagar is proceeding with the investigation of this case and at its own motion, it added new Section 379-B of IPC because initially FIR registered by it was almost under the Sections of IPC which were bailable in nature except Sections 384 IPC and 506 IPC and all the sections were triable by Magistrate Ist Class whereas Section 379-B IPC is triable by the Court of Session. So, in order to show the seriousness in the matter and to show the cause of recovery of currency notes, police has added Section 379-B of IPC which appears to have been added on the basis of unbelievable story.”

On a perusal of the impugned order (Annexure P-7) and more particularly the extracts reproduced hereinabove, it is not hard to discern that the Court below, while dealing with the bail application of respondent

itself, even before the trial could commence. It is against all canons of law and judicial propriety.

No doubt, a Court, can, while hearing an application for grant of bail peruse the evidence and other material on record, but it cannot investigate the facts and comment on the merits of the case, which precisely the Court below has erroneously ventured into.

Prima facie, the allegations levelled by the petitioner in the FIR in question leave no manner of doubt about the complicity of the accused including respondent No.2, inasmuch as, on the intervening night of 03rd and 04th July, 2020, between 09:30 P.M. to 06:59 A.M., Rs. 12.00 lakhs were withdrawn from various ATMs, which find corroboration from the account statement of HDFC Bank (Annexure P-8). Had it been a case wherein the petitioner actually owed some money to one of the accused and he wanted to clear his dues, it fails to appeal to reason as to why the petitioner would have chosen to withdraw the money in the dead of the intervening night of 03rd & 04th July, 2020 by carrying out an exhaustive process of swiping the ATM cards as many as 40 times when the same could have been done by issuance of one cheque by the petitioner himself. Strangely, the Court below while passing the impugned order (Annexure P-7) chose to buy the story of accused *qua* the withdrawal of huge amount of money from various ATMs and that too with the consent of the petitioner. Further, if the petitioner had indeed consented to the withdrawal of the money from the ATMs, it is the petitioner himself who would have gone to withdraw the money and not handed over his ATM cards along with the respective pin numbers to respondent No.2, who can be seen swiping the ATM cards and withdrawing money in the CCTV footage collected by the

investigating agency.

Further, it is indeed very strange that the Court below failed to notice that *prima facie* the accused including respondent No.2 had indeed misused the blank signed papers of the petitioner/complainant, otherwise, again it fails to appeal to reason as to why a complaint purportedly made by one of the accused Saleem to Police Station Gannaur on 03.07.2020 and an application moved on the following day with respect to the compromise allegedly arrived at between the petitioner and accused would have been countersigned by the petitioner/complainant Kurban.

Thirdly, the Court below is seemingly ignorant about the basic provisions of law, inasmuch as, while deciding the bail application of respondent No.2, it gave a finding that since the occurrence had taken place at Gannaur (Sonapat), the jurisdiction of Yamuna Nagar had been wrongly invoked. The Court below would have been well advised to at least go through the contents of the FIR in question as it was categorically alleged in the FIR by the petitioner that co-accused Kasim contacted him at Bilaspur as part of a pre-planned conspiracy of all the accused, lured him with an attractive business proposal and thereafter, accompanied him and the petitioner's friend in the evening of 03.07.2020 from Bilaspur itself to Gannaur. Hence, the crime in question originated within the jurisdiction of Police Station Bilaspur (Yamuna Nagar). Further the trial Court for reasons best known to it, failed to take notice of another very vital circumstance, which was clearly spelt out in the FIR itself. The petitioner/complainant after being threatened at Gannaur by the accused was asked to phone up his brother Idris at Bilaspur and ask him to hand over two signed blank cheques belonging to the petitioner's firm to a person who was to meet him at

Chhachhrauli More. Pursuant thereto, his brother arrived at Chhachhrauli More on 04th July, 2020 at 11:20 A.M., where, he was met by a person sent by the accused. The blank signed cheques bearing Nos. '000027 & 000028' were then handed over to the person so sent by the accused. The Court need not be reminded that Chhachhrauli More falls within the jurisdiction of District Yamuna Nagar. Hence, this Court fails to understand as to why the jurisdiction of Yamuna Nagar, much less, Police Station Bilaspur could not have been invoked by the petitioner once it *prima facie* stood revealed that a part of the transaction pertaining to the offences in question did originate and take place within the jurisdiction of Bilaspur Police Station.

Coming next to the alleged delay of 18 days in the lodging of the FIR in question, the trial Court yet again in a tearing hurry without as much as perusing the material on record concluded that there was an unexplained delay and the investigating agency had registered the FIR in connivance with the complainant on the basis of a concocted story. The Court seemingly turned a blind eye to the fact that the petitioner soon after being released by the accused from their captivity on 04th July, 2020, gave a written complaint to the SHO, Police Station, Bilaspur (Yamuna Nagar) on the same day after reaching back and the FIR was registered on the 21st July, 2020, after the investigating agency had investigated the matter and found substance in the allegations levelled in the complaint by the petitioner. Hence, in the circumstances, the observations of the Court below *qua* the purported delay of 18 days in registration of the FIR is totally bereft of merit and exhibits total non-application of mind.

A perusal of the impugned order (Annexure P-7) further raises eyebrows *qua* the observations made by the Court below that the

petitioner/complainant appeared to be in good health while appearing in the Court and the police had *suo-motu* added Section 379B IPC with the motive to harass the accused and plant a false case upon him in connivance with the petitioner/complainant, which on the face of it is an uncalled for observation and cannot be a ground to disbelieve the version of the petitioner/complainant given in the FIR and that too while deciding an application for grant of anticipatory bail. The Court below needs to be reminded that the question of credibility and reliability of the version of the complainant/prosecution can only be put to test during trial.

While dealing with an application for bail and more particularly if it is an anticipatory bail, the Court concerned must give proper and due weightage to the apprehension of the prosecution with regard to the tampering of evidence by the accused. In the instant case, the Public Prosecutor pleaded with the Court below for dismissal of the anticipatory bail of respondent No.2, however, the plea of the Public Prosecutor was brushed aside by the Court by making the following observations in the impugned order:-

“6. Lastly, he prayed for dismissal of the bail application of the petitioner on the pretext that some documents are to be recovered from him apart from the cash amount of the complainant.

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15. Accused is ready to join the investigation of the case. The aforesaid circumstances do not transpire confidence of the court to decline the pre-arrest bail of the accused because under the guise of arrest, the police which is in connivance with the complainant may harass and torture the accused unnecessary regarding the incidents which were

not at all happened within the territorial jurisdiction of Yamuna Nagar, rather the same had happened in the territorial jurisdiction of Police Station Gannaur. The overall perusal of the case reveals that the acquisitions have been made against the present petitioner with the object of injuring or humiliating the petitioner by having him so arrest in this case on the allegations which could not be proved on record prima facie. Therefore, in these circumstances, it appears to me that it is a fit case where concession of pre-arrest bail should be extended to the petitioner.”

The tone and tenor in which the Court below has passed the impugned order, leaves no manner of doubt that it was most unjustified in extending the concession of anticipatory bail to respondent No.2 by jumping to his own assumptions and presumptions which were blatantly contrary to the material on record. In the circumstances, and on a bare reading of the FIR in question *prima facie* it is a fit case for custodial interrogation, more so, when this Court has been apprised by the learned State counsel that respondent No.2 subsequent to the grant of anticipatory bail by the Court below has not been cooperating with the investigating agency coupled with the fact as informed by the learned counsel for the petitioner that respondent No.2 and other accused have still been extending threats of dire consequences, the instant petition is allowed and the impugned order dated 06.08.2020 (Annexure P-7), passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhri, granting anticipatory bail to respondent No.2, is hereby set aside.

The nature and character of the impugned order is such, which demands that an explanation be called for, from the Court below, which

passed the impugned order. The Court concerned shall furnish his explanation with respect to the impugned order passed by it within seven days from today. His reply/explanation, on receipt, shall be put up before this Court.

(MANJARI NEHRU KAUL)
JUDGE

September 16, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*