

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

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CRM-M No.34194 of 2020

DATE OF DECISION : 28th OCTOBER, 2020

Mosam

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.25 dated 12.01.2019 registered under Sections 279, 336, 353, 186, 307, 420 & 120-B IPC and 5/13 (2) and 17 of Haryana Gauvansh Sanrakshan and Gau Samvardhan Act and 11/59/60 of Animal Cruelty Act at Police Station Ferozepur Jhirka, District Nuh.

The present FIR came into being at the instance of the police with the allegation that the police party was present on Delhi-Alwar Road for patrolling. At that time a secret informant met the police party and gave information that one Wasim, the present petitioner; and two more persons Singara Singh and Bagicha Singh; who were indulging in business of cow slaughtering, are coming with a ten-tyre truck bearing registration No. RJ-02-GB-4701 loaded with the cows from Faridkot Punjab. These cows are to be taken to Dhakpuri Rajasthan via Ferozepur

Jhirka. If the barricades are raised they can be apprehended. Upon this the police erected barricades. After some time the truck mentioned in the secret information was seen coming. The police gave the signal to the truck to stop. However, instead of stopping, the truck driver tried to run over the police party and smashed the truck into the barricades raised by the police. The driver tried to flee away along with the truck. But after some time, the truck got stopped. Out of the truck four persons came down. Two persons; namely; Singara Singh and Bagicha Singh were arrested by the police, whereas; the petitioner and one Wasim managed to flee from the spot. Hence, the present FIR was registered.

It is contended by counsel for the petitioner that the case against the petitioner is totally concocted. The petitioner has not indulged in any business of cow slaughtering. It is further submitted that although the secret information named the petitioner, as well as, the other persons, however, the petitioner was not found traveling in the truck. The name of the petitioner has been sought to be involved only on the basis of disclosure statement of the co-accused. It is further submitted that although there are two more cases against the petitioner, however, he is already on bail in those two cases. The recovery already stands effected. The petitioner shall join the investigation. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Randhir Singh Thind, DAG, Punjab, accepts notice on behalf of the State.

Learned State Counsel has submitted that on specific secret information, in which the name of the petitioner was also mentioned, the police party had raised a barrier. As per the information; the truck came to the spot of barrier. When the police tried to stop the truck the

occupants of the same tried to run over the police party. Despite that two persons were arrested. The arrested co-accused have also named the petitioner as one of the persons who were traveling in the truck. But he had succeeded in fleeing away from the spot. From the truck, 16 ox/cows were recovered. The arrested co-accused have specifically disclosed that the petitioner was one of the purchasers of the said consignment of the oxen/cows. It is also submitted that the petitioner is habitual of committing the same offence repeatedly. The police need custodial interrogation of the petitioner to unearth the true dimensions of the crime committed by the petitioner, as well as, to collect the evidence regarding his participation in the crime. Hence, the custodial interrogation of the petitioner is required in the present case.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance/interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of

Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Now coming to the facts of the present case, this court finds that there are specific allegations against the petitioner. His name is alleged to be mentioned in the secret information. That secret information has been allegedly corroborated by the disclosure statement of the arrested co-accused. There is a specific allegation that the petitioner managed to escape from the scene. Even the consignment of oxen/cows meant for slaughtering has been recovered from the truck, qua which the petitioner is alleged to be the purchaser and the trader. Hence, this court does not find any ex facie innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Still further this court finds substance in the argument of the counsel for the State that the custodial interrogation of the petitioner may be required by the police to unearth the true dimensions of the crime of the petitioner, as well as, for collection of evidence to substantiate the participation of the petitioner in the alleged crime. The investigation of the case is at the initial stage. Therefore, protecting the petitioner against his arrest, at this stage, would hamper the free and fair investigation on the part of the police as well. Hence this court does not find this to be a fit case to exercise its extraordinary powers under Section 438 Cr.P.C. so as to protect the petitioner against his arrest.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

28th OCTOBER, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No