

CRM-M-4048-2021

Date of Decision : 22.04.2021

Jatinder Singh @ Rambo

...Petitioner

Versus

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. On 26.03.2021, the following order was passed:-

2. "Prayer in the petition under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner, in case FIR No.226 dated 18.05.2020, registered under Sections 302, 506, 148, 149, 188, 269, 270 IPC, Sections 25 and 27, Arms Act, Section 51(B), Disaster Management Act (Sections 201 and 120-B IPC added subsequently), at Police Station Jhabhal, District Tarn Taran.

3. Learned counsel contends that the petitioner has been implicated in a false case solely on the basis of a third disclosure statement made by co-accused, Rashpal Singh, 100 days after the incident and that too while in police custody in another case i.e. FIR No.159 dated 24.08.2020, registered under Sections 307, 353, 332, 333, 186, 34 of IPC and Sections 25 and 27 Arms Act, at Police Station Bikhiwind, District Tarn Taran, pertaining to an attack on a police official and that apart from the aforementioned disclosure statement, there is no other material to connect the petitioner with the commission of the offences, besides the petitioner has been granted pre-arrest bail in FIR No. 159 dated 24.08.2020 by the learned Addl. Sessions Judge, Tarn Taran, vide order dated 01.12.2020, that apart from FIR No.226 dated 18.05.2020, and FIR No.159 dated 24.08.2020, the petitioner does not have any other case registered against him, he will not flee from justice nor tamper with the evidence nor influence witnesses, besides is ready and willing to join investigation and fully cooperate in the investigation as and when directed by the police.

4. Learned counsel contends that FIR No.226 was registered on 18.05.2020, in respect of incident dated 17.05.2020, on the basis of complaint made by one Navjot Singh qua the death of his son Harkirat Singh, on being attacked by Karaj Singh, Rashpal Singh, Harjit Kaur, Ranjit Kaur wife of Karaj Singh, Ranjit Kaur wife of Gurdev Singh, Raju Kumar and three unknown persons.

Learned Counsel contends that as per the FIR, while Rashpal Singh was carrying a pistol, Karaj Singh fired from a .12 bore rifle which hit the deceased and killed him on the spot and that no other person was alleged to be carrying any other weapon, moreover, except for the injury attributed to Karaj Singh, no other injury is attributed to any other person.

Learned Counsel further contends that accused Karaj Singh, Ranjit Kaur wife of Karaj Singh, Ranjit Kaur wife of Gurdev Singh and Raju Kumar, were arrested by the police in FIR No. 226 dated 18.05.2020 on 18.05.2020 but on 20.05.2020, Inspector, Harinder Singh, on the basis of investigation concluded that only Karaj Singh, Rashpal Singh and Raju Kumar had participated in the incident on 17.05.2020, and vide zimni No.3 dated 20.05.2020 found Ranjit Kaur wife of Karaj Singh, Ranjit Kaur wife of Gurdev Singh and Harjit Kaur innocent. Thereafter, on 21.05.2020, statements of Karaj Singh and Raju Kumar were recorded under Section 27 Evidence Act, admitting participation in incident dated 17.05.2020 besides disclosure statement leading to recovery of the .12 bore rifle as also vehicle used in the commission of the offence. However, the aforementioned three ladies who were found innocent by the police were discharged by the learned JMIC, Tarn Taran vide order dated 23.05.2020.

Learned Counsel contended that thereafter, on 05.08.2020, the Investigating Agency presented a final report against Karaj Singh and Raju Kumar and although, Karaj Singh and Raju Kumar were arrested along with others on 18.05.2020, co-accused Rashpal Singh who was absconding was arrested on 24.08.2020, in case FIR No.159 dated 24.08.2020, registered under Sections 307, 353, 332, 333, 186, 34 of IPC and Sections 25 and 27 Arms Act, at Police Station Bikhiwind, District Tarn Taran, on complaint made by ASI Malkiat Singh qua attack on him and that on arrest of Rashpal Singh, a disclosure statement was made by him. Thereafter, on 28.08.2020, Rashpal Singh made second disclosure statement implicating six persons including the present petitioner and Harpreet Singh, Gurchet Singh, Bikramjit Singh, Jassu Mehta and his brother. Consequently, all the above mentioned persons were nominated as accused in case FIR No.159.

Thereafter, Rashpal Singh made third disclosure statement on 30.08.2020 that weapons used in case FIR No.226 dated 18.05.2020, had been obtained by him from one Tejinder Singh son of Jujhar Singh and that he along with Gurchet Singh and Jatinder Singh had gone to the place of occurrence in respect of the incident which had taken place on 17.05.2020. However, no allegation was made of the petitioner being armed with any weapon nor was any overt act or injury attributed to him.

Learned Counsel further contends that the disclosure statement is highly suspicious for as per FIR No. 226 dated

18.05.2020 Karaj Singh was stated to have fired from .12. bore rifle while co accused Rashpal Singh was stated to be in possession of pistol and on arrest of Karaj Singh on 18.05.2020 the .12 bore rifle used by him was recovered on his disclosure statement whereas as per disclosure statement dated 30.08.2020 Rashpal Singh stated that he took .12. bore rifle and pistol along with him to the place of incident and that Karaj Singh took .12 bore rifle from him and fired the shot which killed Harkirat Singh and that he had the pistol and that the .12 bore rifle used in the incident along with country made pistol were recovered pursuant to disclosure statement made by him. However, as per the FIR as well as disclosure statement there was only one .12. bore rifle and the same was recovered on arrest of Karaj Singh on his disclosure statement.

Learned counsel relies upon the decision of Hon'ble the Supreme Court in ***HaricharanKurmi* versus *State of Bihar***, 1964 AIR (SC) 1184 to contend that implication of the petitioner as accused on the basis of confession of a co accused by way of disclosure statement and that too the third one in another case and 100 days after the registration of FIR No.226, is of no evidentiary value. Relevant extract of the decision in ***HaricharanKurmi***'s case (supra) is reproduced as under:-

"13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against other accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chockerburty, ILR 38 Calcutta 559 at p. 588 a confession can only be used to "lend assurance to other evidence against a co-accused". In Periyaswami Moopan v. Emperor. ILR 54 Madras 75 at p. 77 Reilly, J., observed that the provision of Section 30 goes not further than this, "where there is evidence against the co-accused sufficient, "if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as a additional reason for believing that evidence." In Bhuboni Sahu v. The King, 76 Ind App. 147 at p. 155 the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board, observed that " a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be give on oath, nor in the presence of the

accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way. Because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh, 1952 SCR 526 where the decision of the Privy Council in Bhuboni Sahu's case, has been cited with approval. "

5. Learned DAG, Punjab, on instructions from ASI Sarabjit Singh, confirms the position as stated by learned counsel for the petitioner as also that apart from the aforementioned third disclosure statement, there is no other material to connect the petitioner with the commission of offence besides no injury is attributed to the petitioner nor the petitioner is alleged to have carried any weapon.

6. I have considered the submissions of learned counsel for the parties and after taking into account absence of any material pointed out to connect the petitioner with the commission of the offence other than confession of co accused by way of third disclosure statement, that too, 100 days after the incident and in another case, well settled law in respect thereto, beside it not being the stand of the State that the petitioner is likely to flee from justice or tamper with evidence or influence the witnesses, as also of the petitioner having undertaken to join investigation and fully cooperate in

the same as and when required by the police, I am of the view that the plea of the petitioner for anticipatory bail is justified.

Accordingly, in the light of the position noted above, the petitioner is directed to join investigation and fully cooperate with the police. However, in the event of arrest, the petitioner be released on ad-interim pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Arresting / Investigating Officer till the next date of hearing. The petitioner shall abide by the conditions envisaged under Section 438 (2) Cr.P.C., failing which, the interim protection granted to the petitioner, shall stand vacated.

List on 19.04.2021”.

3. Learned counsel for the petitioner contends that pursuant to order dated 26.03.2021, the petitioner joined investigation, fully cooperated with the police, was released on ad interim pre arrest bail and that his custodial interrogation is not required.

4. Learned Senior DAG, Punjab, on instructions from ASI CharanjitSingh confirms that pursuant to the order of this Court dated 26.03.2021, the petitioner joined investigation, cooperated in the investigation, was released on ad-interim pre-arrest bail and his custodial interrogation is not required.

5. In view of the statement of the learned Senior DAG, Punjab, order dated 26.03.2021 passed by this Court, is made absolute. The petitioner shall abide by the conditions enumerated in Section 438(2) Cr.P.C.

6. Petition stands disposed of in the aforementioned terms.

(B.S. Walia)
Judge

22.04.2021.

ps

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.