

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

CRM-M-5110-2020

Date of Decision: 13.07.2021

Parveen Kumar

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM:HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ankur Lal, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana.

Mr. R.S. Mamli, Advocate, for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in case bearing FIR No.202 dated 18.06.2016, under Sections 147, 148, 149, 302 of the Indian Penal Code, 1860, registered at Police Station Tosham, District Bhiwani.

It has been submitted by the learned counsel for the petitioner that the present FIR was lodged on the basis of statement made by one Pawan Kumar in which specific attributions were made with regard to the petitioner as well but on the investigation, the police found that the petitioner was not involved and he was innocent and, therefore, after thorough investigation the name of the petitioner was kept in column No.2 and challan pertaining to the remaining accused was filed in the Court. He further

submitted that the aforesaid complainant Pawan Kumar thereafter, filed an application before the learned trial Court under Section 319 of the Code of Criminal Procedure for summoning the petitioner and other co-accused. Learned trial Court vide order dated 16.01.2020 allowed the application under Section 319 Cr.P.C. and summoned the petitioner on the basis of statement of the complainant as PW-1 and without any corroborated evidence led before the Court. Learned counsel has relied upon the judgment of Supreme Court in '*Hardeep Singh versus State of Punjab and other*' [2014(1) R.C.R. (Criminal) 623] to submit that the summoning order under Section 319 Cr.P.C. cannot be purely on the basis of identical statement which the complainant had made earlier before the police and which was already on record at the time of evidence and a strong prima facie satisfaction was required for summoning an additional accused.

Learned counsel further submitted that so far as the present case is concerned the prayer was limited only to the extent that since the petitioner intends to appear before the learned trial Court to join the trial and he may not be arrested during the interregnum period in pursuance of the summoning order.

Notice of motion was issued by this Court on 05.02.2020 and it was directed that since the petitioner has stated that he wishes to surrender before the learned trial Court, he was directed to appear before the learned trial Court on 14.02.2020. It was further directed by this Court that in the meantime, in case the petitioner is to be arrested then he shall be admitted to interim anticipatory bail subject to the conditions provided under Section 438(2) of Cr.P.C.

Today, learned counsel for the petitioner has submitted that the petitioner in pursuance of the order passed by this Court on 05.02.2020 has already surrendered before the Court on 14.02.2020 and has been admitted to bail on furnishing of bail and bonds and has submitted that therefore, the order dated 05.02.2020 may be confirmed.

Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted on instructions from SI Suresh Kumar that the aforesaid factual position with regard to the surrendering of the petitioner before the learned trial Court and furnishing bail bonds is correct. He further submitted that so far as the police is concerned since no recovery is to be effected from the petitioner and his custodial investigation is not required by the police and petitioner is already facing trial and has joined the proceedings before the learned trial Court.

Both the learned counsel for the petitioner as well as the learned State counsel have submitted that since the custodial investigation of the petitioner is not required, the order dated 05.02.2020 may be made absolute.

However, Mr. R.S.Mamli, learned counsel for the complainant has submitted that although, it is correct that the petitioner has been admitted to bail by the learned trial Court but his orders regarding anticipatory bail may not be confirmed. He has made submissions that since the matter is serious in nature and he is one of the main accused, he opposes the grant of anticipatory bail.

I have heard the learned counsel for the parties.

The petitioner has admittedly in pursuance of the order passed by this Court on 05.02.2020 surrendered before the learned trial Court more

than one year ago i.e. on 14.02.2020 and has been admitted to bail and has furnished the bail bonds. It is not the case of the State that the petitioner had misused the concession of bail or has violated any of the terms and conditions of the bail. The petitioner is already facing trial. The argument raised by the learned counsel for the complainant that he may not be granted anticipatory bail on the ground that the matter was serious in nature and the petitioner was the main accused is not sustainable as anticipatory bail cannot be denied merely on the ground that the matter is serious in nature. The facts and circumstances of the each and every case are to be seen in their entirety.

In above of the above and considering the totality of the circumstances of the present case, the present petition is allowed. The order dated 05.02.2020 is hereby made absolute.

13.07.2021

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No