

CRM-M No.9165 of 2021
Date of decision: 19.04.2021

Shrikant Petitioner

Versus

State of Haryana Respondent

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

Present : Mr. Himanshu Sharma, Advocate for the petitioner.
Mr. Krishan K. Chahal, Addl. AG, Haryana.
*****B.S. Walia, J. (VC)**

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.402 dated 15.10.2020, registered under Sections 147, 149, 302, 323, 120-B IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, at Police Station City Rewari, District Rewari.

3. On 26.03.2021, the following order was passed:-

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner, in case FIR No.402 dated 15.10.2020, registered under Sections 147, 149, 302, 323, 120-B IPC and Section 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, at Police Station City Rewari, District Rewari.

3. Learned counsel contends that the FIR was registered on the basis of complaint made by complainant-Maman son of Sohan Lal, alleging therein that he was earning his livelihood by plying a Rehriselling eggs along with his son-Himanshu at Suncity, Rewari, and on 12.10.2020, he was selling eggs along with his son-Himanshu, when his cousin, Rajesh son of Jagdish, working as a Home Guard at Police Station Bhadwas, came to see him and at around 07:00 hours, two persons came on a Mahindra Tractor and inquired about the rate of eggs from him, whereupon, he told them that the rate of boiled egg was Rs.10/- and Rs. 7 / - for a non-boiled egg. Thereafter aforesaid two persons said that if you want to sell each egg @ Rs.5/- then give it, but he refused with folded hands, whereupon, both persons started abusing him and said that they would come later and after about 10 minutes, two vehicles, with 10/15 persons arrived and started beating him, his son and also gave good beating to his cousin-Rajesh by inflicting leg and punch blows, that on hearing noise, Pratap Singh son of Lal Chand and many others came from the village and consoled them, the complainant party also felt that they had not received serious injuries and on the next day, Rajesh left for night duty but on 14.10.2020 i.e. two days after the incident, Rajesh felt acute problem in the stomach, whereupon, he was taken to Trauma Hospital, Rewari, from where, he was shifted to Vedanta Hospital but died.

Learned counsel contends that the case set up by the prosecution before the learned Addl. Sessions Judge

*Rewari, was that during investigation it was learnt from the disclosure statement of co accused Deepak, Rakesh and Vinod, that the petitioner accompanied them to the place of incident and inflicted injuries upon persons present at the egg stall. Learned counsel contends that in view of the name of the petitioner not having been mentioned in the FIR and the petitioner having been implicated solely on the basis of disclosure statement of co-accused, the petitioner was entitled to grant of pre-arrest bail in view of the law laid down by Hon'ble the Supreme Court in **Haricharan Kurmi versus State of Bihar', 1964 AIR (SC) 1184**. Relevant extract of the aforementioned decision 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. "*

Learned Counsel for the petitioner further contended that as per disclosure statement of co accused Rakesh, he, Amit,

Deepak, Sonu @ Anil, Vinod son of Munshiram, Vinod son of Sher Singh, Satpal son of Rampal and the petitioner Shrikant went in two vehicles to the egg stall and gave slap, fist and kick blows to three persons present there and about who Sonu had signalled but out of said accused, Vinod son of Munshiram, Anil Kumar son of Braham Prakash, Rakesh son of Roshan Lal, Deepak Yadav son of Devanand and Devanand son of Balbir Singh were arrested and subjected to test identification parade before a Magistrate but were not identified by the complainant Mamman or his son Himanshu and were released on bail u/s 439 Cr.P.C. and further that as per investigation conducted by Mohd. Jamal, H.P.S. Deputy Superintendent of Police, Rewari, Vinod son of Sher Singh, Amit son of Devanand, Sonu @ Satpal son of Rampal were found innocent on 07.12.2020. Learned Counsel contended that in the circumstances the disclosure statement of co accused Rakesh, Deepak and Vinod were of no evidentiary value.

Per contra, learned Addl. AG, Haryana, contended that custody of the petitioner was required for test identification parade in terms of Section 54-A Cr.P.C., and in the eventuality of the petitioner not being identified by the complainant/his son, he could be released on regular bail.

Per contra learned counsel for the petitioner relies upon the decision of Hon'ble the Division Bench of Gujarat High Court in

Abbas Hasam Ghanchi vs. State of Gujarat 1993 CLR (Gujarat) 472, to contend that in the FIR except for general allegations regarding 10/15 persons having given beating to the complainant, his son and Rajesh, no other particulars had been furnished with regard to physical appearance, or description regarding height, structure, complexion of the skin, shape of face, nose, eyes, forehead, voice, clothes and/or any other distinct features by way of any injury marks, if any, etc. and on the basis of which, such unidentified suspect could be reasonably spotted, arrested and ultimately put up for test identification by the Investigation Agency and what was stated in the FIR by the complainant was that if the accused persons were brought before him and his son, they could identify them.

Learned counsel contends that the same implies that for the purpose of identification of an unidentified accused, the petitioner was required to be arrested and produced before alleged eye witnesses for the purposes of ascertaining and getting ascertained his identity solely on the basis of disclosure statement by co-accused without any identification/description having been given by the complainant or his son and despite the fact that Vinod son of Munshiram, Anil Kumar son of Braham Prakash, Rakesh son of Roshan Lal, Deepak Yadav son of Devanand and Devanand sonof Balbir Singh were arrested and subjected to test identification

parade before a Magistrate but were not identified by the complainant Mamman or his son Himanshu and were released on bail u/s 439 Cr.P.C. and further that as per investigation conducted by Mohd. Jamal, H.P.S. Deputy Superintendent of Police, Rewari, Vinod son of Sher Singh, Amit son of Devanand, Sonu @ Satpal son of Rampal were found innocent on 07.12.2020. Learned Counsel contended that in the circumstances the disclosure statements of co accused Rakesh, Deepak and Vinod were of no evidentiary value. Learned counsel reiterates that as per settled law, implication as accused solely on the basis of disclosure statement, which is of no evidentiary value, entitles the petitioner to grant of pre-arrest bail. Learned counsel contends that apart from the disclosure statement there is no other material to connect the petitioner with the alleged commission of offence besides there is no other case registered against the petitioner, he will not flee from justice nor influence witnesses, besides is ready and willing to join investigation and fully cooperate in the investigation as and when required by the police.

I have considered the submissions of learned counsel for the parties and after taking into account all aspects of the matter namely that apart from the statement of co-accused, Rakesh, who disclosed that he along with Amit, Deepak, Sonu alias Anil, Vinod son of Munshi Ram, Vinod son of Sher Singh, Satpal son of Ram Pal and Shri Kant,

went to the rehari of the complainant and gave slap and fist blows to three persons present there and thereafter came back to their houses there is no other material to connect the petitioner with the commission of the offence. On the other hand, as per disclosure statement of Vinod, it was Amit, Deepak, Rakesh and Sonu @ Anil who gave beating whereas as per disclosure statement of Deepak, he, his brother Amit, Rakesh son of Roshanlal, Vinod son of Munshiram, Vinod son of Sher Singh, Satpal son of Rampal, Anil @ Sonu and the petitioner gave beating to two persons pointed out by Anil @ Sonu while Anil @ Sonu in his statement disclosed that Amit, Deepak and Vinod gave the beating. Moreover as has been noted above Vinod son of Munshiram, Anil Kumar son of Braham Prakash, Rakesh son of Roshan Lal, Deepak Yadav son of Devanand and Devanand son of Balbir Singh were arrested and subjected to test identification parade before a Magistrate but were not identified by the complainant Mamman or his son Himanshu and were released on bail u/s 439 Cr.P.C. and further that as per investigation conducted by Mohd. Jamal, H.P.S. Deputy Superintendent of Police, Rewari, Vinod son of Sher Singh, Amit son of Devanand, Sonu @ Satpal son of Rampal were found innocent on 07.12.2020. Besides no injury to the deceased is attributed to the petitioner nor the petitioner is alleged to have carried any weapon. Besides, in view of the averments in the FIR, the question of applicability of Section 302 IPC, would be a debatable issue before the trial Court. Further, although bar of Section 18 of SC, ST Act has been taken but the same has not been pressed. Moreover,

*in the absence of there being any allegation that the offence was committed on the ground that the victims were members of a Scheduled Caste or Scheduled Tribe, the bar u/s 18 of the SC/ST Act would not apply and the petition u/s 438 Cr.P.C. would be maintainable. Reference in this context is made to the decision of Hon'ble the Supreme Court in **Dinesh @ Buddha vs State of Rajasthan (2006) 3 SCC 771** as also **Khumman Singh vs The State of Madhya Pradesh (2019) SCC Online SC 1104** as per which it has been held that for Section 3(2)(v) of the SC/ ST Act to apply it is mandatory for the offence to have been committed against a person on the ground that such person is a member of a SC / ST. It is also not the stand of the State that the petitioner is likely to flee from justice or influence the witnesses. Moreover, the petitioner has undertaken to join investigation and fully cooperate in the same as and when required by the police.*

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."

4. Today, learned counsel for the petitioner contends that pursuant to the order of this Court dated 26.03.2021, the petitioner joined investigation, fully cooperated in the same, was released on ad-

interim pre-arrest bail and that his custodial interrogation is not required.

5. Learned Addl. A.G., Haryana, on instructions from *SI Sanjay Kumar*, confirms that pursuant to the order of this Court dated 26.03.2021, the petitioner joined investigation, cooperated in the same, was released on ad-interim pre-arrest bail and that his custodial interrogation is not required.

6. In view of the statement of learned Addl. A.G., Haryana, order 26.03.2021 passed by this Court, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 438(2) Cr.P.C.

7. Petition stands ***disposed of*** in the aforementioned terms.

(B.S. Walia)
Judge

April 19, 2021
'Rajneesh/Amit'

Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No.