

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

104

CRM-M-30874-2021

Date of Decision : 23.08.2021

Gurjinder Singh @ Raju and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Lupil Gupta, Advocate
for the petitioners.

Mr. H.S. Grewal, Addl. A.G., Punjab
for respondent No.1-State.

Mr. Umesh Aggarwal, Advocate for
respondent No.2.

Arun Kumar Tyagi, J. (Oral)

The case has been taken up for hearing through vide conferencing.

1. The petitioners have filed this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of anticipatory bail in case FIR No.96 dated 05.07.2021 registered under Sections 406 and 420 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station E-Division, District Amritsar.

2. The above-said FIR was registered on written complaint (numbered on receipt as UID No.1737657 dated 27.01.2020) made by Gurwinder Singh to the A.C.P., Amritsar City. In the complaint Gurwinder Singh, inter alia, alleged that on 09.12.2019 Gurjinder Singh @ Raju (petitioner No.1) and his brother Satinder Singh (petitioner No.2) had taken gold ornaments weighing 128 grams and 430 milligrams of the value of Rs.5,39,100/- from him for showing the same

to their customers agreeing to return the same but on demand they refused to return the same and criminally intimidated him. Pursuant to registration of FIR, the police is investigating the case.

3. This Court vide order dated 04.08.2021 while issuing notice of motion, granted interim anticipatory bail to the petitioners with direction to join the investigation.

4. The petition has been opposed by the respondent-State and the complainant but replies to the petition have not been filed by the respondent-State and the complainant.

5. In the course of hearing on 04.08.2021 the petitioners were alleged to have made statements admitting their liability in the preliminary inquiry conducted by the police and learned Counsel for the petitioners, on instructions from the petitioners, submitted that the petitioners had taken gold weighing 800 grams out of which gold weighing 700 grams had been returned and that the petitioner admit their liability qua gold weighing 100 grams and are ready to pay the amount equivalent to value thereof to the complainant within time period to be agreed upon by the parties or to be fixed by the Court.

6. I have heard learned Counsel for the petitioners, learned State Counsel as well as learned Counsel for the complainant and have gone through the record.

7. Learned Counsel for the petitioners has submitted that in compliance with order dated 04.08.2021, the petitioners had joined the investigation and handed over gold weighing 100 grams to the Investigating Officer which can be got released by the complainant.

The custodial interrogation of the petitioners is not required and interim anticipatory bail granted to them may be confirmed.

8. Learned State Counsel has acknowledged that in compliance with order dated 04.08.2021 passed by this Court, the petitioners had joined investigation and submitted that their custodial interrogation is not required for effecting any further recovery.

9. Learned Counsel for the complainant has stated that the petitioners had agreed to pay the amount equivalent to the value of 100 grams of gold to the complainant within time period to be agreed upon the parties or to be fixed by the Court and that total 128 grams of gold was to be returned by the petitioners. Recovery of the balance 28 grams of gold is pending. The petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

10. At this stage, learned Counsel of the petitioners has submitted that the petitioners are ready to pay an amount of Rs.5,39,000/- to the complainant and are also ready to settle the matter which mainly involves civil liability.

11. Learned Counsel for the complainant has also agreed that the amount equivalent to the value of 100 grams of gold comes to Rs.5,39,000/- and in case payment thereof, the complainant has no objection to grant of anticipatory bail to the petitioners and complainant is also ready to settle the matter.

12. In view of the facts and circumstances of the case, particularly the fact that custodial interrogation of the petitioners is not required in the case and there is no material to justify the apprehension

of the petitioners fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses but without expressing any opinion on the merits of the case, I am of the considered view that the petitioners deserve the concession of anticipatory bail.

13. Therefore, the petition is allowed and order dated 04.08.2021 granting interim anticipatory bail to the petitioners- **Gurjinder Singh @ Raju** and **Satinder Singh** is made absolute subject to the condition that the petitioners pay an amount of Rs.5,39,000/- to the complainant within 15 days from today by way of bank draft. In case of such payment by the petitioners to the complainant, the petitioners shall be entitled to release/return of 100 grams of gold handed over to the Investigating Officer of the case. The parties shall appear before the Secretary of the District Legal Service Authority, Amritsar who shall refer the matter to Lok Adalat for making efforts for amicable prelitigative settlement between the parties. The petitioners shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C. However, in case of non-payment of amount of Rs.5,39,000/- to the complainant or failure to comply with the conditions enumerated Section 438(2) of the Cr.P.C., the petitioners shall not be entitled for protection of anticipatory bail granted to them.

14. Before parting with this case, it may be observed that in the course of hearing it came to the notice of this Court that in the present case, the FIR was registered under orders of Commissioner of Police, Amritsar City on the basis of report of preliminary inquiry submitted by

S.I. Balwinder Singh, Police Station E-Division, Amritsar, approved and forwarded by Mr. Parvesh Chopra, PPS, Assistant Commissioner of Police, Amritsar and supported by legal opinion given by Deputy D.A. (Legal), Amritsar but preliminary inquiry was not concluded within permissible period of six weeks with the consequence that in the present case on the basis of complaint admittedly received on 27.01.2020, FIR was registered on 05.07.2021 after delay of more than one and half years and there was wrongful denial of fundamental right of access to justice to the complainant due to non registration of the FIR for the period of more than one year and four months.

15. Even though in the present case the Court was primarily concerned with the question of grant of anticipatory bail to the petitioners on the petition filed under Section 438 of the Cr.P.C. but as observed by this Court in its order dated 04.08.2021 this Court cannot turn blind eye to blatant denial of fundamental right of access to justice to the complainant by the instrumentalities of respondent No.1-State. Therefore, this Court also took up the question of providing appropriate relief to the complainant for breach of his fundamental right to access of justice which also arose in the present case.

16. Learned State Counsel also sought time to file reply qua the question of payment of compensation to the complainant for denial of fundamental right to access of justice for the period of more than one and half years. However, the respondent-State has not filed any reply/response on the question of grant of appropriate relief to the complainant.

17. Learned State Counsel has submitted that preliminary enquiry was delayed due to administrative reasons of heavy work load, law and order duties requiring urgent attention and lack of requisite infrastructure and the delay in conclusion of the preliminary inquiry was not deliberate and wholly unjustified so as to entitle the complainant to any relief particularly when the FIR has already been registered on his complaint.

18. On due consideration of the material on record and submissions made by learned State Counsel, I am of the considered view that the submissions made by learned State Counsel are devoid of any merit.

19. In ***Lalita Kumari Vs. Government of U.P. and others : 2013(4) R.C.R. (Criminal) 979*** Hon'ble Supreme Court observed as under:-

“111) In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
- iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do*

not register the FIR if information received by him discloses a cognizable offence.

- v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
- vi) *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
 - a) *Matrimonial disputes/ family disputes*
 - b) *Commercial offences*
 - c) *Medical negligence cases*
 - d) *Corruption cases*
 - e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

- vii) *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*
- viii) *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”*

20. Subsequently, Hon'ble Supreme Court vide order dated 05.03.2014 passed on ***Crl. M.P. No.5029 of 2014 in Writ Petition (Criminal) No.68 of 2008*** modified clause (vii) of paragraph 111 of its judgment dated 12.11.2013 as under:-

“(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days

generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the cause of it must be reflected in the General Diary entry.”

21. In ***Imtiyaz Ahmad Vs. State of Uttar Pradesh and others : 2012(2) RCR (Criminal) 1*** Hon’ble Supreme Court observed that a person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.

22. The right of access to justice cannot be denied by the State to anyone on the ground of infrastructural deficiencies, administrative exigencies or financial constraints and the State is under constitutional mandate to facilitate and protect exercise of the same.

23. Victim of a crime or his kith and kin have legitimate expectation that the State will through its instrumentalities of the administration of criminal justice system apprehend, prosecute and punish the guilty. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of the infrastructure.

24. No doubt, in case of non registration of FIR by the police, the complainant can make representation under Section 154(3) of the Cr.P.C., can file complaint before the concerned Judicial Magistrate

having jurisdiction to try the case with application under Section 156(3) of the Cr.P.C. and writ petition before this Court for issuance of appropriate directions. Further, In-charge of any police station/police officer who knowingly disobeys to the prejudice of the complainant direction of the law regarding the manner in which he shall conduct investigation which begins only with registration of FIR will be liable to be prosecuted under Section 166A of the IPC. Yet the availability of these remedies does not furnish any lawful justification to wrongful denial, by instrumentalities of the State, of fundamental right of the complainant to access of justice and is also not a valid ground to deny grant of appropriate relief for the same.

25. Payment of compensation for breach of fundamental right is now recognized to be a public law remedy available under Article 32 and 226 of the Constitution of India. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of the victims and reference in this regard may be made to ***Kewal Pati Vs. State of U.P. : 1995(3) RCR (Criminal) 411 (death of prisoner by coprisoner); Supreme Court Legal Aid Committee VS State of Bihar : (1991)3 SCC 482 (failure to provide timely medical aid by jail authorities); Chairman, Rly. Board Vs. Chandrima Das : 2000(1) RCR (Criminal) 803 (rape of Bangladeshi national by Railway staff); Nilabati Behera Vs. State of Orissa : 1994(1) RCR (Criminal) 18 (Custodial death) and Khatri (I) Vs. State of Bihar : (1981)1 SCC 623 (prisoners' blinding***

by jail staff).

26. In the present case, respondent No.1-State of Punjab has violated fundamental right of the complainant to access of justice by denying registration of FIR for the period of more than one and half years despite the fact that registration of FIR on the basis of complaint disclosing commission of cognizable offence was mandatory and preliminary inquiry, if any, initiated for ascertaining whether the complaint disclose commission of any cognizable offence was mandatorily required to be completed within six weeks.

27. In view of the facts and circumstances of the case, above-referred judicial precedents and availability of public remedy of payment of appropriate compensation for breach of fundamental right of a citizen, respondent No.1 is directed to pay nominal amount of Rs.11,000/- to the complainant as compensation for wrongful denial of his fundamental right to access of justice by non registration of FIR for the period of more than one year and four months. The compensation be paid to the complainant within one month from the date of receipt of a copy of this order.

28. The Chief Secretary, Government of Punjab is directed to file compliance report accordingly within one month from the date of such payment. The compliance report so filed shall be put up before this Court on judicial side for such further orders as may be considered to be appropriate.

29. A copy of this order be supplied to learned State Counsel for the respondent-State of Punjab for requisite compliance and be also

sent to Director Generals of Police in the States of Punjab and Haryana and U.T. Chandigarh for sensitizing the police officers for requisite compliance in respect of the right of the complainant to access of justice.

23.08.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No