

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

CRM-M-25615-2020(O&M)

Date of decision:-12.1.2021

Mobin

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.S. Matya, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Mobin, aged about 28 years, resident of village Jalalpur-II, Tehsil Bhapoli, District Panipat, an accused in FIR No.108 dated 24.2.2019 under Sections 148, 149, 186, 279, 307, 336, 379, 411, 420 IPC and Section 25 of Arms Act, registered with Police Station Samalkha, District Panipat.

Briefly stated, the facts of the case as per the prosecution story are that on receipt of a secret information that one Wakib Ali along with four other persons was transporting stolen batteries in a pick-up

vehicle with forged number plate from Smalkha via Biholi to UP through Sanauli, a police party from Police Station Smalkha, District Panipat headed by ASI Ashok Kumar laid a picket near Bhapra Road Stadium, Smalkha. The pick-up vehicle came there at a high speed. When it was signalled to stop, then one of the occupants sitting in the vehicle fired at ASI Ashok Kumar, who had a miraculous escape. Thereafter, the driver of the pick-up vehicle drove it towards Biholi. That vehicle was chased by the police party. On control room being informed, second police party headed by ASI Naveen had laid nakabandi. The occupants of the pick-up vehicle had fired at police party. The police party returned the fire. The driver of the pick-up vehicle lost control over the vehicle and it turned turtle in a ditch. Three occupants of the vehicle along with the driver left the vehicle and ran away. Waqib Ali came under the pick-up vehicle. He was rescued and arrested. He was found in possession of a country-made pistol of .315 bore. The pick-up vehicle was found to be carrying 70 tower batteries. It was having a forged number plate. Formal FIR in the matter was recorded. Waqib Ali accused was interrogated. On the basis of information provided by him, co-accused Alishan was arrested on 3.3.2019 and a country-made pistol, a spring actuated knife and a Santro car were recovered from him. One more accused Sahjaad was arrested, who during investigation disclosed that the present petitioner Mobin was also travelling in the pick-up vehicle at the relevant time and he was having a country-made pistol besides 20 cartridges and further he had fired at the police party. In that way, the present petitioner got nominated in the case.

Apprehending his arrest in this case, the present petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, which was assigned to learned Additional Sessions Judge, Panipat. However, his such request was declined by learned Additional Sessions Judge, Panipat vide order dated 31.7.2020. As such, the present petitioner has approached this Court asking for the similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the records.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

The allegations against the petitioner are very grave and serious that he having an illegal weapon had fired at the police party. Such type of acts by criminals need to be taken with all the seriousness, otherwise there would be chaos in the society with people taking law into their hands and the situation would come to a point, where might would be right. Such type of situation can be prevented only if the criminals indulging in such type of acts are dealt with firmly and strictly without showing any misplaced sympathy to them, otherwise they will feel encouraged and emboldened to indulge in such type of activities time and again.

Though learned counsel for the petitioner tried to put up an argument that petitioner is not named in the FIR and his name has cropped

up during interrogation of co-accused, which statement according to him is not admissible in evidence. But I find that these contentions are without merit. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprits, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

Furthermore, a misconception is there that statement of co-accused is inadmissible. Section 30 of the Indian Evidence Act provides that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

The information provided by co-accused during his interrogation can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act.

Learned counsel for the petitioner has argued that the story set up by the prosecution is unconvincing. I find that this argument does not merit much attention at this stage. The genuineness of the prosecution story is not to be seen at this stage while deciding the question as to

whether the petitioner/accused is entitled to grant of pre-arrest bail or not.

That aspect shall be seen by the trial Court on conclusion of trial.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation to effect the recovery of weapon and ammunition from him and for ascertaining his role in the incident. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

Thus the petition is doomed for failure and is dismissed accordingly.

12.1.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No