

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

213

**CRM-M-36344-2020
Date of decision: 19.01.2021**

Tarun Hans

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Mohan Singh Chauhan, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Asstt. A.G., Haryana
for respondent No.1-State.

Mr. Dhruv Gupta, Advocate
for respondent No.2.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) 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.332 dated 08.08.2020 registered under Sections 148, 307, 323 and 506 read with Section 149 of the Indian Penal Code, 1860 (for short, "the IPC") and Section 25 of the Arms Act, 1959 at Police Station Ambala Cantt., District Ambala.

Vide order dated 09.11.2020, while issuing notice of motion, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation.

The petition has been opposed by respondent No.1-State

in terms of reply filed by way of affidavit of Ram Kumar, HPS, Deputy Superintendent of Police, Ambala Cantt, District Ambala in the Registry which is taken on record.

The petition has also been opposed by learned Counsel for respondent No.2-complainant. However, no reply has been filed by respondent No.2-complainant.

In compliance with the order dated 09.11.2020 passed by this Court, SHO-Vijay Kumar has appeared before this Court through video conferencing and he has sent video clip of the CCTV footage and photograph on whatsapp group which show that the petitioner was carrying pistol in his hand at the time of the alleged occurrence. The print out of the said photograph is taken on record.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2 and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case on the statement of Sachin who is not the owner of the house which is alleged to have been attacked. As per the allegations made in the FIR one of the persons had fired gun shot. The petitioner is being falsely implicated as the person who had fired said gun shot. No empty was recovered from the spot. The Coordinate Bench of this Court vide order dated 29.10.2020 passed in CRM-M-26484-2020 has commented that Section 307 of the IPC seems to have been added without any basis. Co-accused Karan and Shiva @ Ponga have been granted anticipatory bail. In compliance with order dated 09.11.2020, the petitioner has joined the investigation.

On the other hand, learned State Counsel and learned Counsel for respondent No.2-complainant have submitted that the petitioner joined the investigation but he did not co-operate with the investigating officer and he intentionally did not disclose anything regarding country made pistol (desi katta) and misrepresented the facts. Custodial interrogation of the petitioner is required for recovery of the country made pistol (desi katta). In view of gravity of accusation, the quantum of sentence which the conviction may entail and other related factors, the petitioner does not deserve the grant of anticipatory bail and the petition may be dismissed.

The High Court and Court of Session have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extraordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have also to be taken into consideration.

In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See also ***D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v.***

Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305).

In ***State Rep. by The CBI Vs. Anil Sharma : (1997) 7 SCC 187***, the Supreme Court held as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

In ***P. Chidambaram Vs. Directorate of Enforcement (SC) : 2019(4) R.C.R.(Criminal) 875*** Hon'ble Supreme Court observed as under :-

"67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to

resort to that extraordinary remedy.”

Keeping in view the facts and circumstances of the case nature of accusation and evidence against the petitioner prima facie showing involvement of the petitioner in the crime, the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, for ascertaining involvement of other persons in commission of the crime, effecting recovery of the country made pistol from the petitioner and also collection of material evidence available in this regard, quantum of sentence which conviction may entail, consequent apprehension of the petitioner fleeing from justice or tempering 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 petitioner does not deserve the grant of anticipatory bail.

In view of the above, the petition for grant of anticipatory bail to the petitioner is hereby dismissed and interim order dated 09.11.2020 granting interim anticipatory bail to the petitioner is vacated.

19.01.2021

Vishal

(ARUN KUMAR TYAGI)
JUDGE

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