IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

202

CRM-M-37713-2020
Date of decision: 27.01.2021

Gobinda and another .....Petitioners

Versus

State of Punjab and another .....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. K.B. Raheja, Advocate
for the petitioners.

Mr. Rana Harjasdeep, DAG, Punjab
for respondent No.1-State.

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ARUN KUMAR TYAGI, J. (ORAL)

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

Petitioners-**Gobinda and Vicky @ Virk** have filed the present 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.139 dated 06.07.2019 registered under Sections 307, 323, 148 read with Section 149 of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 in Police Station Sadar Ferozepur, District Ferozepur.

While issuing notice of motion on 16.11.2020, this Court had granted interim anticipatory bail to the petitioners with direction to join the investigation and the relevant part of the said order reads as under:-

> *"The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of anticipatory bail*

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in case FIR No.139 dated 06.07.2019 registered under Sections 307, 323, 148 read with Section 149 of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 in Police Station Sadar Ferozepur, District Ferozepur.

Learned Counsel for the petitioners has submitted that the petitioner has been falsely implicated in the case. As per the prosecution version the petitioners were armed with dangs and injuries attributed to the petitioners were declared to be simple in nature. The injury attracting Section 307 of the IPC is attributed to co-accused Sandeep @ Billa. Co-accused Gora and Ravi have been granted bail by the trial Court vide orders dated 17.12.2019 and 23.09.2020 respectively whereas co-accused Anish Kumar @ Nishu has been granted regular bail by the Coordinate Bench vide order dated 03.12.2019 passed in CRM-M-50442-2019 (O&M). The petitioners are ready to join the investigation.

Notice of motion.

Pursuant to supply of advance copy of the petition, Mr. Sandeep Kumar, DAG, Punjab has appeared and accepted notice on behalf of the respondent-State.

In view of the facts and circumstances of the case, presence of the complainant is considered to be necessary for just and proper decision of the petition. Therefore, the complainant is ordered to be impleaded as respondent No.2. Memo of Parties be amended accordingly.

Learned State Counsel seeks time to file reply.

Adjourned to 27.01.2021.

Notice to newly added respondent No.2 be issued for that date and notice be also given dasti, if so desired.

In the meanwhile, the petitioners-Gobinda and Vicky @ Virk are directed to join the investigation as and when called upon to do so. In the event of their arrest, the petitioners shall be released on interim bail by the

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arresting officer/investigating officer on furnishing of bail bonds by them to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall not be entitled to the protection of interim bail allowed to them."

The petition has been opposed by the learned State Counsel. However, no reply has been filed by the respondent-State.

Vide order dated 16.11.2020 the complainant was ordered to be impleaded as respondent No.2 and notice was issued to respondent No.2 which was received back with the report that he is in Army and is on his duty.

I have heard learned Counsel for the petitioners and learned State Counsel and have gone through the record.

Learned Counsel for the petitioners has, while reiterating submissions made on 16.11.2020, submitted that in compliance with order dated 16.11.2020, the petitioners have joined the investigation.

On the other hand, learned State Counsel has vehemently opposed the petition and submitted that in view of gravity of accusation, the petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

However, learned State Counsel has, on instructions from ASI Ramesh Kumar, acknowledged that in compliance with order dated 16.11.2020 passed by this Court, the petitioners have joined the investigation and that their custodial interrogation in the present case is not required for effecting any recovery.

In view of the facts and circumstances of the case, nature of accusation against the petitioners, the fact that custodial

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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 grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 16.11.2020 granting interim bail to petitioners-**Gobinda and Vicky @ Virk** is made absolute. However, 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., failing which the protection of anticipatory bail order shall not be available to them.

27.01.2021 (**ARUN KUMAR TYAGI**)
Vinay **JUDGE**

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

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