

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-6830-2022.

Date of Decision: 28.02.2022.

Kamil

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Baljeet Beniwal, Advocate for petitioner.

Lalit Batra, J.

Case has been taken up for hearing through Video Conferencing.

This second petition under Section 438 Cr.P.C for grant of pre-arrest bail has been moved by petitioner-**Kamil** in case FIR No.56 dated 20.02.2020 under Sections 5, 13(2) and 17 of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Section 11 of Prevention of Cruelty to Animals Act, registered at Police Station Mundkati, District Palwal.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly petitioner alongwith co-accused namely Malik Mulla @ Irfan, Mubin and Jakria were found transporting six/seven cows for the purpose of slaughtering and further they had tied the said animals in a cruel manner. He further submits that registration number of vehicle was not mentioned in the FIR. He further urges that name of petitioner has been mentioned in the

array of accused merely on the basis of suspicion which creates a dent in the prosecution version. He further urges that nothing is to be recovered at the instance of petitioner. He further submits that previous petition (CRM-M-32543-2021) filed by the petitioner was wrongly dismissed, vide order dated 09.09.2021 (Annexure P/2) on the false ground taken by the State counsel that petitioner is involved in FIR No.80 dated 24.02.2014 under Section 302 IPC, registered at Police Station Prahladpur, New Delhi, whereas in that case FIR, petitioner was discharged by learned Additional Sessions Judge, Saket Court, Delhi, vide order dated 26.08.2015 (Annexure P/3). He further submits that as per instructions, there is only one case bearing FIR No.101 dated 30.05.2020 under Section 25 of Arms Act, registered at Police Station Utawar, District Palwal, in which case the petitioner is on bail. He further urges that in the instant case FIR, the petitioner has already been declared 'proclaimed offender', vide order dated 15.03.2021 and the said order has been challenged by the petitioner before this Court by filing petition (CRM-M-33297-2021, which is pending adjudication for 22.09.2022. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana, accepts notice on behalf of respondent-State. Complete copy of paper book has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that petitioner has been specifically named in the FIR. He further submits that despite several raids conducted by the police, petitioner could not be arrested. He further submits that since petitioner was intentionally avoiding his arrest, after following due process of law, he was declared 'Proclaimed Offender' in the instant case FIR on 15.03.2021. He further submits that petitioner is habitual offender as he is involved in another criminal case bearing FIR No.101 dated 30.05.2020 under Section 25 of Arms Act, registered at Police Station Utawar, District Palwal. He further urges that on the same grounds, previous petition (CRM-M-32543-2021) for grant of pre-arrest bail moved by petitioner was dismissed on merits by this Court, vide order dated 09.09.2021 (Annexure P/2) and since there is no change in scenario, instant second petition is not maintainable. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner alongwith co-accused namely Malik Mulla @ Irfan, Mubin and Jakria were found transporting six/seven cows for the purpose of slaughtering and further they had tied the said animals in a cruel manner. As pointed out by learned State counsel, petitioner is habitual offender being involved in

another criminal case FIR, as detailed above, and further he has already been declared 'Proclaimed Offender' in the instant case FIR.

The Hon'ble Supreme Court in case '**State of Madhya Pradesh Vs. Pradeep Sharma**', **Criminal Appeal No.2049 of 2013 (Arising out of S.L.P. (Crl.) No.4102 of 2013)** decided on **06.12.2013** has held that if an accused is absconding and declared proclaimed offender in terms of Section 82 Cr.P.C., the said accused should not be granted anticipatory bail.

It is pertinent to mention here that after the disposal of previous petition of petitioner (CRM-M-32543-2021) for grant of pre-arrest bail by this Court, vide order dated 09.09.2021, there is no change in scenario and the second petition is not maintainable.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is now well-settled proposition of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the Police. The Court has also to see that the investigation is in the province of the Police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the Police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public

interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail and even otherwise the specious reason of change in circumstance cannot be invoked for successive anticipatory bail applications, once it is rejected by speaking order.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

28.02.2022

jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No