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

CRM-M-7918-2022

Date of decision: 24.02.2022

VIKAS AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vikram Singh, Advocate for the petitioners.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. In FIR No. 284 of 23.12.2021, registered at Police Station Munak, District Karnal, offences constituted under Sections 148, 149, 323, 324, 452, 506 of IPC and (Section 307 IPC added later on), are embodied.

2. In the FIR (supra), both the co-accused are attributed an incriminatory role inasmuch as, co-accused Babu Ram with user of danda, and, co-accused Vikas with user of scissors, inflicting injuries on non-vital parts of the body of the victim.

3. After the lodging of the FIR (supra), the investigating officer concerned, had proceeded to arrest the bail applicant. However, they moved an application cast under Section 437 Cr.P.C., before the learned Judicial Magistrate concerned, and, thereons the learned Judicial Magistrate concerned, proceeded to make an order for releasing the bail applicant(s) from judicial custody.

4. Be that as it may, subsequently after the medical practitioner concerned, examining the injuries as became entailed, upon the person of the victim, he opined that life endangering injuries became inflicted, upon,

the body of the victim, in sequel to his being assaulted by the bail applicants, through their respectively using danda, and, scissors.

5. Consequently, the learned APP concerned, moved an application before the learned Judicial Magistrate concerned, seeking the making of non-bailable warrants of arrest, upon the bail applicants, as after the afore opinion being made by the medical practitioner concerned, an offence under Section 307 of the IPC, became constituted against the bail applicants, and, that it being a more serious, and, heinous offence, than the one(s) initially embodied in the FIR (supra). Upon the above application an affirmative order becomes pronounced. The above made order by the learned Judicial Magistrate concerned, is meritworthy, as it falls completely within the ambit of a verdict made by the Hon'ble Apex Court, in case titled as **Pradeep Ram V. State of Jharkhand, 2019 SCC Online SC 825**, the relevant portion(s) whereof became extracted hereinafter.

“29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the Court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

6. Pointedly the factum, that subsequently hence an offence under

Section 307 of the IPC, became made out against the accused, and, in sequel whereof, the investigating officer also added the afore penal provisions against the bail applicants. Thereupon, within the ambit of sub-paras 1, and, 2, of the afore drawn verdict, the offence (supra), became a cognizable as well as a non-bailable offence(s), and, the investigating officer concerned, could validly claim, from the learned Judicial Magistrate concerned, an order for the accused being arrested, through the issuance of non-bailable warrants of arrest, upon them.

7. In pursuance to the order embodied in Annexure P-3, the bail applicants proceeded to cast an application under Section 438 Cr.P.C. before the learned Additional Sessions Judge, Karnal. The apposite application bearing No. CIS No.BA/409/20122 rather became dismissed, by the learned Additional Sessions Judge, Karnal. The reason as meted, in the order (supra), as made by the learned Additional Sessions Judge, Karnal, is grooved in the factum, that with the Hon'ble Apex Court, in judgment (supra), making a pronouncement, that upon the investigating officer concerned, subsequently adding cognizable, and, non-bailable offences against the bail applicants, thereupon the accused are required to be making their surrender, and, thereafter applying for bail qua newly added cognizable, and, non-bailable offences.

8. Though, the above order is not challenged by the bail applicants, through theirs casting, before this Court, a revision petition constituted under Section 397 of Cr.P.C. Nonetheless the afore lack of apt re-coursing(s) by the petitioners, would not yet constrain this Court, to proceed to dismiss the instant bail application, rather as not maintainable, as the liberty of the bail applicants is at stake.

9. Therefore, only for the purpose of testing the validity of the afore order, this Court proceeds to analyse the import of the verdict drawn (supra), by the Hon'ble Apex Court. Though, there is a candid mandate, therein, that upon addition of cognizable, and, non-bailable offences by the investigating officer concerned, after his making investigations into the FIR, rather earlier containing offences of a less graver, and, less heinous inculpable genre, than the one(s), which became added subsequently, hence, thereupon the accused surrendering, and, that only upon declining to them the facility of anticipatory bail, rather the accused being amenable for being lawfully arrested.

10. The reason for maintaining the instant bail application, is obvious, and, apparent inasmuch as, the Hon'ble Apex Court, has neither curtailed nor bridled scope of the statutory empowerment, of either the Sessions Court concerned, or the High Court, to yet in the wake of the afore additions of graver, and, more heinous offences, than the ones earlier thereto carried in the apposite FIR, rather not entertain application(s) for bail cast under Section 438 Cr.PC., and/or not to exercise lawful jurisdictions thereon, and, rather proceed to make it not maintainable.

11. In sequel after analysing the import of the verdict (supra), which has been incorrectly understood, and, misapplied by him, this Court proceeds to take a view contrary, to the one hence adopted, by the learned Additional Sessions Judge concerned, rather in his order comprised in Annexure P-4.

12. Be that as it may, since as afore stated, by the learned State counsel, that after the FIR (supra), becoming registered rather the bail applicants, preceding the order embodied in Annexure P-1, becoming

arrested, and, during the course of their police custody, theirs ensuring the making(s) of recovery, at their respective instances rather respectively of scissors, and, danda, and, also his making a statement before this Court, that the victim has fully recuperated, from the injuries entailed, upon his person, and, that he has been discharged from the hospital.

13. Consequently, it is not deemed fit and appropriate to curtail, and, fetter the personal liberty of the bail applicants, through this Court yet ordering for theirs being re-put to custodial interrogation, especially when earlier during course thereof, the investigating officer has ensured the recoveries of weapons of offence at their respective instances.

14. Therefore, the bail applicants, are ordered to, in the event of their arrest, being not be arrested, even qua further added Section 307 of the IPC, however subject to theirs furnishing, apart from theirs already having furnished personal, and, surety bail bonds in the sum of Rs.50,000/- each, to the satisfaction of the investigating officer, one surety bond(s) each, in the like amount, to the satisfaction of the investigating officer. Moreover, the bail applicants shall also give an undertaking to the investigating concerned that, as and when they are summoned through a written hukamnama, served upon them, they shall ensure theirs rendering their fullest co-operation to the investigating officer concerned.

15. Disposed of.

16. Dasti copy.

(SURESHWAR THAKUR)
JUDGE

24.02.2022

Ithlesh

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No