

CRM-M-17301-2021 (O&M) and
CRM-M-17479-2021 (O&M)

-1-

206
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17301-2021 (O&M)
Date of Decision: 09.08.2022

(I)
Varun @ Pusu

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-17479-2021 (O&M)

(II)
Varun @ Pusu

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Saurabh Dalal, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

Both the petitions are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions have been filed for grant of anticipatory bail by one petitioner although pertaining to two different FIRs of similar nature.

FIR No.258 dated 21.06.2020, under Sections 392, 397, 379B,

34, 201 IPC and Sections 25/54/59 of Arms Act was lodged on the allegations that three persons namely, Mayank, Ashish and Rohit on gun point had taken the car key from the complainant forcibly and threatened to kill him and therefore, the aforesaid FIR was lodged. On the disclosure statement made by these three co-accused the name of the petitioner was nominated since the co-accused had stated that the weapons were given to them by the present petitioner and that was the reason as to why the petitioner was nominated in the present FIR. The second FIR i.e. FIR No.523 dated 09.11.2020 was lodged under Sections 186, 353, 307, 34 IPC and Sections 25/54/59 of Arms Act after a gap of about 4 months. As per the allegations in the said FIR the information with regard to the same three co-accused namely, Mayank, Ashish and Rohit was received by the police that they are coming with large quantity of arms in Cruze car No. DL-10CB-1002 for committing a big snatching or murder. Thereafter three teams were constituted by the police to nab them and then a white colour Cruze was seen coming from Maharana Pratap Chowk, Murthal Road and the car was signaled but the driver of the said vehicle hit the inspector's Government vehicle Bolero car from the side and a boy sitting in the vehicle opened fire straight on the CIA Inspector who was leading the team. However, the inspector narrowly survived and the shot hit on the driver side of the Government vehicle. At the same time, Constable Sachin tried to stop the Cruze car by hitting wooden stick on its front windscreen but the driver of the car drove away the vehicle towards open road. The car was followed by the police party and the accused in the car again fired on the Government vehicle twice which hit the front windscreen and below the windscreen and

thereafter the police party succeeded in apprehending the accused persons and they also confiscated 8 weapons i.e. 5 pistols of 32 bore, 2 pistols of 315 bore, 1 pistol of 38 bore and large quantity of live cartridges were recovered from them.

The argument raised by the learned counsel for the petitioner was that in both the FIRs the petitioner was not named in the FIR and his name was nominated on the basis of disclosure statement of the co-accused regarding the supply of weapons which is not admissible in evidence and therefore, the petitioner may be considered for the grant of anticipatory bail. He further submitted that the petitioner has already joined investigation in pursuance of the orders passed by this Court while interim bail was granted and therefore, the said orders may be confirmed. He further submitted that the petitioner is a Sportsman and participated in National and International events in wrestling and he has been falsely implicated in the present case.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has stated on instructions from ASI Ashok and ASI Jogender who are the Investigating Officers in both the FIR and who are present in the Court that it is a case where although the name of the petitioner has been nominated on the basis of disclosure statement but when the petitioner joined the investigation in both the cases he has not cooperated at all with the investigation process and has not given any information at all. He further submitted that when the petitioner was called for joining of the investigation rather written interrogatory was given to him and he wrote in his own handwriting that he does not possess any mobile phone. The mobile phone of the petitioner was required for the purpose of

ascertaining the link of the petitioner with the aforesaid co-accused. On a specific query being asked to the learned counsel for the petitioner by this Court during the course of arguments as to whether the petitioner possesses mobile phone or not, he submitted that he was contacted on phone of his brother. The learned Deputy Advocate General, Haryana further brought to the notice of this Court that in between these two FIRs which were lodged in the month of June and November the petitioner was also involved in another FIR in the State of Rajasthan under Sections 395, 120-B IPC and Section 25 of Arms Act in which the petitioner was arrested and was released on bail and the other co-accused in that case are the same co-accused who are in the present case. He further submitted that the petitioner has not cooperated with the investigation process at all and it is a case where there was a recovery of huge quantity of arms from the co-accused and they have specifically stated that they have got these pistols etc. from the petitioner, the custodial interrogation of the petitioner is required for the purpose of elicitation of truth and for further qualitative interrogation.

The learned State counsel also relied upon a judgment of the Hon'ble Supreme Court in *State represented by CBI Versus Anil Sharma [(1997) 7 SCC 187]*

I have heard the learned counsel for the parties.

It is a case where the name of the petitioner was nominated in both the cases on the basis of disclosure statement of the co-accused. The argument which was raised by the learned counsel for the petitioner was that the disclosure statement of a co-accused was not admissible in evidence

and therefore, the petitioner deserves the concession of anticipatory bail and furthermore, since the petitioner has joined investigation, the interim order may be made absolute. However, the learned Deputy Advocate General, Haryana has vehemently opposed the grant of anticipatory bail on the ground that although the name of the petitioner was nominated on the basis of disclosure statement but that itself would not vest any right in the petitioner for seeking grant of anticipatory bail. He submitted that it is a case where there was recovery of huge quantity of arms and ammunition from the other co-accused and in both the FIRs which were lodged within a span of about 5 months in both the cases the same co-accused persons have disclosed the name of the present petitioner and apart from the same, the petitioner was also involved in another case which was registered on similar allegations at Rajasthan on 21.09.2020 in between the present two FIRs. While considering the prayer of an accused for grant of anticipatory the Court has to strike a balance between the individual liberty on the one hand and on the another hand, the other factors are also to be considered including the factor that there should not be any hampering of the investigation process by granting of anticipatory bail. In the present case the stand which has been taken by the learned Deputy Advocate General, Haryana on instructions from the I.Os who are present in the Court that in both the cases the petitioner has not cooperated with the investigation process although he joined the investigation and in fact the joining of the investigation was merely a empty formality since he has even refused to disclose the number and surrender his mobile phone and rather has stated that he does not have any mobile phone. Learned Deputy Advocate General,

Haryana had also during the course of arguments submitted that it is not only surprising but it is almost impossible in today's era that a person who is a sportsman and participated in National and International events will not possess any mobile phone. The argument raised by the learned State counsel does carry weight. Another argument was also raised by the learned State counsel that in such like cases where large number of arms are involved and the present petitioner and the other co-accused are the same person in all the three FIRs including two in the State of Haryana and one in the State of Rajasthan, the custodial interrogation of the petitioner is required for elicitation of truth also cannot be ignored. Therefore after considering the submissions made by the learned counsel for the parties, this Court is of the view that although the petitioner joined investigation but he did not cooperate with the investigation process and joining of the investigation was merely an empty formality and it cannot vest any right in the petitioner for grant of anticipatory bail. This Court is also of the view that considering the recovery of huge quantity of arms and ammunition from the co-accused it is a fit case where the custodial interrogation of the petitioner is required.

Consequently, finding no merit in both the petitions, the same are hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

09.08.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No