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

CRM-M-20065-2022

Date of decision: 11.05.2022

TARSEM KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Sumit Gupta, Addl. A.G. Haryana.

Mr. Brijender Kaushik, Advocate for complainant.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition, cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.78 of 26.03.2022, registered at Police Station Sadar Ambala, District Ambala, wherein offences constituted, under Sections 323, 307, 427, 452, 506 of IPC, are embodied.

2. The genesis of the prosecution case becomes rested, upon Annexure P-1. Annexure P-1 is the FIR (supra), lodged at the instance of one, Devinder Singh. From a reading of the contents of the afore, it becomes unfolded, that a land deal became entered into amongst the complainant, and, present bail petitioner, and, that at the time of the apposite agreement, to sell, being drawn amongst the concerned, some earnest money was paid by the present bail petitioner to the victim-complainant. However, since within the time stipulated in the agreement to sell, the remaining portion of the sale consideration became not liquidated by the present bail petitioner to the victim, hence in terms of the agreement to sell, the earnest money

became forfeited. However, it is alleged in the FIR, that the present bail petitioner was pained at the forfeiture of the earnest money, as paid to the victim, at the time of the drawing agreement to sell amongst them. Therefore, it is further alleged that he made an intimidatory attempt to ensure, that the victim-complainant restores the earnest money, as paid by the present bail petitioner, to him. The above constitutes the motive for the happenings of subsequent penal occurrence(s), as become enumerated in the FIR (supra).

3. It is contended respectively, on behalf of the learned State counsel, and, on behalf of the victim-complainant, that the above reared a motive in the present bail petitioner, and, rather also catapulted him to make the penal offences, on 24.03.2022. Both the learned counsels contend with much vigor before this Court, that in respect of intimidatory threats, as made by the present bail petitioner, with respect to the failed agreement to sell, rather there is tangible evidence comprised in cell phone recordings, enclosing therein the voice of the bail petitioner. Consequently, they argue that all the incriminatory events, as occurred, on 24.03.2022 are, at this stage to be *prima-facie* concluded to be worthy of credence, and, that if the indulgence of ad-interim bail is granted to the present bail petitioner, thereupon there is every likelihood of his re-issuing intimidatory threats against the victim, and, that hence the claimed relief in the instant petition be declined to the present bail petitioner.

4. However, for the reasons to be assigned hereinafter the afore made submission, does not appeal, to the judicial conscience of this Court, and, is rejected.

5. Primarily, on 24.03.2022, at about 6:00-6:30 p.m., it is narrated

in the FIR, that when the victim was returning from his fields, on his motorcycle, and, when he reached on the turning point of his home, then the present bail petitioner, is echoed, to drive the vehicle towards the victim, and, also attempted to run over his vehicle over him, rather with an intention to kill him, and, also is alleged to strike with his vehicle, his motorcycle with severe force. In consequence whereof, he details in the FIR, that he fell down from the bike, and, which became struck, by car being driven at the relevant time, by the present bail petitioner, and, that he suffered multiple injuries, and, also his bike became entailed with huge damage, in sequel to its being struck with a severe force, by the vehicle occupied, at the relevant time, by the present bail petitioner. The above made narration is *prima-facie* required to be corroborated by examinations being made of the injuries, as purportedly became entailed, upon the victim rather by a doctor, and, also the above further narrations were also required to be further corroborated by the mechanical expert concerned, examining the bike, which became struck by the vehicle driven, at the relevant time by the accused, and, especially when it is narrated in the FIR, that with the impact of its striking the motorcycle, driven at the relevant time, by the victim, it became entailed with immense damage. However, at this stage, there is no evidence adduced on record by the prosecution suggestive, that the afore narrations become corroborated by the above alluded evidence, excepting the fact of only simple injuries becoming entailed upon the injured. Therefore, this Court is constrained to conclude, that the imputations of the above incriminatory role to the present bail petitioner, appear to be *prima-facie* stained with a vice of falsehood.

6. However, yet the informant narrates in the FIR, that within a

short span thereafter, the accused yet attempting to making an intimidatory cell phone call to him, and, therein his communicating to him, that whether the victim is alive or dead, besides threatening him to come out, and, that he would not spare him. The above made echoings also appear to be, at this stage, *prima-facie* a sheer invention, and, concoction, and the reason for making the afore inference becomes drawn from the fact, that when the prior thereto incident has been concluded, by this Court to be stained with the vice of falsehood, therefore, there was no occasion for the present bail petitioner, to allegedly over his cell phone ask from the complainant whether he was dead or alive.

7. In addition, it is also alleged, that subsequent to the above referred incident, the present bail petitioner attempted to ram into the house of the victim rather with his vehicle bearing Registration No.HR-05-AT-2807, make Swift, and, that the above penal incident, is a personification, of the persistence of the present bail petitioner to attempt to eliminate the victim-complainant. In respect of the above a CCTV footage is also contended by the learned State counsel to be available on the records of the investigating officer concerned. However, it is fairly stated, at the bar, by the learned State counsel, on instructions given to him, by SI Suresh Kumar, that the victim-complainant, was never in the vicinity of the gate, which was attempted to be damaged with a car occupied, at the relevant time, by the present bail petitioner, nor inside his house, and, if so, this Court cannot draw any firm conclusion, that rather in the allegedly committed act by the present bail petitioner, he had the relevant *mens-rea* or the penally inculpable state of mind, to either attempt to murder the victim or to eliminate him. The only offence in respect thereof is *prima-facie* the one

constituted under Section 427 of the IPC, and, may be *prima-facie* an offence in respect of the afore subsequent event cannot be the one, under Section 307 of the IPC.

8. However, the learned counsel appearing for the State contends, with much vigor before this Court, that irrespective of the afore drawn conclusions, and, irrespective of the fact, that may be, the above occurrences, do not unfold, the relevant *mens-rea* existing in the mind of the present bail petitioner, but yet the existences of pre-crime, and, post crime video recordings, are suggestive qua yet the present bail petitioner rearing the relevant *mens-rea*, for his committing the offences embodied in Section 307, and, under Section 506 of the IPC.

9. He supports above submission from his making a reference to paragraph 5 of the order, as made by the learned Additional Sessions Judge concerned, upon bail application No.669-2022, as became presented, and, whereons relief became declined to the present bail petitioner. However, the afore references do not suggest, that at the relevant time, the certification of the audio recordings captured in the cell phone concerned, as required under Section 65-A of the Indian Evidence Act, was on the records of the investigating officer concerned. Therefore, the want of above statutory certification by an expert or the service provider concerned, rather for meteing authenticity to the audio recordings hence capturing the vocal intimidations meted either post crime or pre-crime by the present bail petitioner, to the victim rather cannot, *prima-facie* at this stage, be imputed any credence.

10. In consequence, the above are of no relevance, at this stage.

11. However, the learned counsel appearing for the State also

contends with much vigor, that the car occupied, at the relevant time by the accused, and, the cellphone, from which the intimidatory calls, were made to the victim, are required to be recovered. However, even the afore submission is rejected, and, the reasons for making the afore submission, becomes rested, upon the afore drawn conclusions, and, also upon the CCTV *prima-facie* footage capturing the crime site, may rather be sufficient incriminatory evidence about the user, of the above car, at the relevant crime site, by the present bail petitioner, and, if so, it is not deemed fit, and, appropriate to order that the present bail petitioner ensure the recovery of the crime car, to the investigating officer concerned.

12.. Consequently, the petition is allowed, and, in the event of the investigating officer concerned, proceeding to arrest the present bail petitioner, the investigating officer may not arrest the bail petitioner, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.1 lac each, to the satisfaction of the arresting officer, and, also subject to his rendering co-operation to him, in the investigations to be carried into the offences mentioned in the present FIR. In addition, he shall not tamper with prosecution evidence nor shall influence the prosecution witnesses. Moreover, with a further condition of his providing his voice samples to the investigating officer concerned, to enable him to refer them to the expert concerned, for the latter makings matchings thereof with the disputed audio recordings contained in the cell phone concerned, besides his handing over his cell phone to the investigating officer.

13. Dasti copy.

(SURESHWAR THAKUR)
JUDGE

11.05.2022

Ithlesh

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No

ITHLESH KUMAR
2022.05.13 16:59
I attest to the accuracy and
authenticity of this order