

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

207

CRM-M-27712-2022 (O&M)
Date of decision : 30.09.2022

Poonam

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Nikhil Ghai Advocate
for the petitioner.

Mr. Tanuj Sharma, Asstt. A.G., Haryana
for the respondent-State.

Mr. J.S. Hooda, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.352 dated 25.09.2021 registered under Sections 148, 149, 201, 302 and 120-B of the Indian Penal Code, 1860 at Police Station Hodal, District Palwal.

The above-said FIR was registered on complaint made by complainant Hetram alleging that on 24.09.2021 at about 10:30 a.m. his son Rinku had gone to Hodal and did not come back. At 7:00 p.m. the police had telephonically informed him regarding murder of his son. He submitted that his son Rinku was murdered by Padam, Kamal, Dharam, Vishnu, Satpal, Bobby, Vinay, Jitu, Bhola and other persons.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. Neither the

name of the petitioner mentioned in the FIR nor in the first disclosure statement made by co-accused Jitender @ Jitu which was recorded on 03.10.2021. In second disclosure statement recorded on 05.10.2021 he stated that he had blackmailed and pressurized the petitioner for calling the deceased-Rinku. In third disclosure statement recorded on 07.10.2021 he also stated that the petitioner was pressurized and blackmailed by him to chat with the deceased-Rinku and trap him in her love without disclosing her his plan of committing murder of Rinku. Another co-accused Jaswant @ Jashan also made 03 disclosure statements in which name of the petitioner was not mentioned. The petitioner was not aware about the plan of co-accused of committing the murder of Rinku. She was not present at the spot at the time of occurrence. There is no legal admissible evidence against the petitioner to connect her with the crime. The petitioner is already ready and willing to join the investigation.

On the other hand, learned State counsel and learned counsel for the complainant oppose the present petition in terms of status report filed by way of an affidavit dated 19.07.2022. Learned State counsel submits that co-accused Jitender and Jaswant had used the petitioner to set up the honey trap and called the deceased in a secluded place and brutally murdered him. On examination of CDR of mobile No.6230450765 of accused Jitender, it is evident that he has been in constant touch with deceased-Rinku on his mobile No.8572066307 and with the petitioner on her mobile No.9897227174. The record of conference calls of mobile number of accused Jitender was also obtained which shows that the deceased talked to the

petitioner through conference calls by the accused Jitender. On 24.09.2021 there were 06 conference calls between accused Jitender, the petitioner and deceased-Rinku. The petitioner actively participated in the crime. She is evading arrest for the last one year. Custodial interrogation of the petitioner is required for proper/thorough investigation of the case and also for effecting recovery of mobile phone used by her to call the deceased on the scene of occurrence.

I have heard learned counsel for the parties and perused the record.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma : (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point

towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

Keeping in view the above facts as well as nature of the offence, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

30.09.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No