

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

CRM-M-35414-2022

Date of decision : 10.08.2022

Dr. Bhojraj Garg and another

.....Petitioners

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Bipan Ghai, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioners.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ, J. (Oral)

Petitioners have approached this Court praying for grant of anticipatory bail in case FIR No.0519 dated 30.07.2022, under Sections 3, 4 and 5 of M.T.P. Act and Sections 201, 313, 315, 336 & 353 of IPC, registered at Police Station Sector-8, Faridabad.

Adumbrated facts of this case are that the present FIR was lodged by the complainant/informant Dr. Maan Singh. It has been alleged that the confidential information about the petitioners namely, Dr. Bhojraj Garg and Smt. Ram Murti Garg regarding performing illegal abortions in the Nursing Home at their home was received. It was known the petitioners charge Rs.3,000/- to Rs.5,000/- for performing the abortions. On the basis of the information received, the team was constituted consisting of Dr. Maan Singh, Dr. Rajesh Kumar, Dr. Ram Niwas, Dr. Jyoti and DCO Pooja Chaudhary. As per the plan, the team raided the Nursing Home of the petitioners on 29.07.2022 and found a lady patient namely, Guddi there. The team questioned the lady patient Guddi and on

the basis of information provided by her, the amount of Rs.3,000/- charged from her by the petitioners was recovered from Dr. Bhojraj. The team conducted the search of the Murthy Nursing Home wherein, the medicines were found which are generally used for abortions. On the basis of the raid conducted, the present FIR was registered against the petitioners and the investigation commenced thereupon. Apprehending arrest, the petitioners approached the Court of learned Additional Sessions Judge, Faridabad praying for grant of bail. Learned Additional Sessions Judge after hearing counsel for the parties, declined the same vide his order dated 05.08.2022. Aggrieved by the same, the petitioners are before this Court by way of filing the present petition.

Learned Senior counsel has vehemently argued that the petitioners have been falsely and frivolously implicated in this case. He submits that the petitioners are the reputed doctors. He has submitted that the petitioners have been framed in this FIR as a counter-blast to the complaint i.e. DD No.2768/CC/P dated 30.03.2021 which was lodged by petitioner No.1 against Medical Officers of B.K. Hospital for committing offence under Sections 166/182/196/211/441/342/357/389/120-B of IPC. He submits that in the year 2016, a medical team of health department raided the premises of the petitioners and a case of false currency notes and medicine was falsely planted upon him by lodging FIR No.633 dated 03.08.2017. However, the petitioner No.1 was acquitted by the Hon'ble Court of Sh. Virender Prasad, Additional Sessions Judge, Faridabad. Thereafter, petitioner No.1 initiated a legal proceedings against the member of the raiding team for falsely implicating him in FIR No.633 dated 03.08.2017. He submits that in view of the ongoing legal

proceedings initiated by the petitioner against the authorities, he was falsely implicated in this case. He submits that the medicines allegedly recovered from the Nursing Home of the petitioner are also not concerned with the termination of pregnancy and have been falsely planted upon the petitioners. He further submits that the offence under Section 313 IPC is not attracted in this case as the patient Guddi herself came to the Nursing Home for abortion. He further submits that offence under Sections 201/315/336 & 353 IPC are not made out. He further submits that as petitioner No.1 is a registered medical practitioner and has legal medical license, therefore, the offence under Sections 3, 4 and 5 of the M.T.P. Act, 1971 are not made out. He submits that in the overall facts and circumstances of the case, no case for custodial interrogation is made out. However, the petitioners are ready to join the investigation.

Notice of motion.

On the other hand, learned State counsel who has accepted notice on behalf of State has opposed the submissions made by learned counsel for the petitioners. He has submitted that the petitioners do not have a clean antecedents. On the earlier occasion also, petitioner No.1 faced the prosecution. He submits that in the present case, the team of doctors were duly constituted who carried out the raid in the Nursing Home of the petitioners and caught them red-handed. He has submitted that there are ample recovery of material from the Nursing Home of the petitioners *prima facie* showing their complicity for the offence alleged and thus, for a thorough and fair investigation, the custody of the petitioners is essential. He has submitted that the petitioners are influential persons and granting anticipatory bail to them would prejudice the fair investigation. Thus, he submits that the same be declined.

Heard.

After hearing learned Senior counsel and the State counsel and perusing the record, it is apparent that *prima facie* the petitioners are involved in a sensitive case. A duly constituted team had raided the Nursing Home of the petitioners where the patient of whom the abortion was to be carried out was also found. Besides this, there is a recovery of the objectionable medicines from the Nursing Home. As per record, in the past also, petitioner No.1 had faced the prosecution in another case though, he was acquitted. The petitioners have approached this Court praying for grant of pre-arrest bail.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in

Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while

granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount

consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 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.

Looking into the facts and circumstances of the present case, it is apparent that the case needs a thorough and fair investigation which is backbone of every criminal trial. Granting pre-arrest bail to the petitioners at this stage, when the investigation is at threshold, in all its

probability would prejudice the ongoing investigation. Thus, keeping in view the law settled by the Hon'ble Supreme Court, this Court is of the opinion that the petitioner do not qualify for grant of anticipatory bail. Hence, the petition being devoid of any merits, is hereby dismissed.

10.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No