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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35639-2020 (O&M)

Date of Decision: 14.03.2022

Rohtash

.....Petitioner

Vs.

State of Haryana

.....Respondent

215-A

CRM-M-43403-2020

Satyender

...Petitioner

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjay Vashisth, Advocate,
for the petitioner (in CRM-M-35639-2020).

Mr. Abhishek Goyal, Advocate,
for the petitioner (in CRM-M-43403-2020).

Mr. Neeraj Poswal, A.A.G., Haryana.

Mr. Ram Bilas Gupta, Advocate, for respondent no. 2.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

On 22.12.2020, the following order had been passed by this court
(in CRM-M-43403-2020):-

*“All cases listed today have been taken up for
hearing by way of video conferencing because of the
situation existing due to the COVID-19 pandemic.*

*By this petition, the petitioner seeks the
concession of 'anticipatory bail', under the provisions of
Section 438 of the Cr.P.C., upon FIR no.548, dated
06.11.2018, having been registered at Police Station Sadar
Ballabgarh, District Faridabad, alleging therein the
commission of offences punishable under Sections 420,*

467, 468, 471 and 120-B of the IPC.

Learned counsel for the petitioner submits that the case of the petitioner is not dis-similar to that of his co-accused Rohtash who has been admitted to interim bail by this court vide an order passed on 09.11.2020 in CRM-M-35639 of 2020.

Notice of motion.

Mr. B. S. Virk, learned DAG, Haryana, accepts notice at the asking of the court.

Upon query to him, he submits that as per his instructions, the petitioner and the said co-accused may be at least similarly placed to some extent.

That being so, the petitioner is directed to join investigation and upon him so joining if he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall, further, abide by all the conditions stipulated in Section 438 (2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 12.01.2021.

To be heard alongwith CRM-M-35639 of 2020 .”

Thereafter, on 16.09.2021 the following order was passed:-

“Thereafter, the matter remained pending with the interim order continued, with today learned State counsel submitting on query that as per his instructions from the police official who is present to assist him, the petitioners' custodial interrogation is not required.

In view of the above, in fact this petition should be disposed of as having been rendered infructuous today itself, even in terms of the ratio of the judgment of the Supreme Court in M.C.Abraham vs. State of Maharashtra (2003) 2 SCC 649.

However, learned counsel for the complainant insists on arguing the matter, with him also requesting that he may be allowed to file a reply to both the petitions.

The complainant is ordered to be impleaded as respondent no. 2 in each petition, with the Registry to carry out the necessary correction in the memo of parties, by taking his particulars from the FIR itself.

If the complainant wishes to file a reply to the petitions he will do so well before the next date of hearing, with an advance copy thereof to counsel for the petitioners.

However, at the outset, before addressing merits on the next date of hearing, counsel for the complainant would be required to address arguments in terms of the ratio of the judgment of the Supreme Court in the aforesaid case.

It is to be of course noticed that learned counsel for the complainant has submitted that the petitioner in CRM-M-35639-2020 having been admitted to interim bail upon this petition filed under the provisions of Section 439 of the Cr.P.C., such interim order cannot continue, without him first surrendering before the trial court.

Again it is to be noticed that learned State counsel, upon query, has submitted that even as regards that petitioner, whatever documents were to be recovered from him having been recovered and the report under the provisions of Section 173 of the Cr.P.C. having been

submitted qua him, his custodial interrogation is not required.

That being so, naturally counsel for the complaint would again be required to address arguments at the first instance on that issue on the next date of hearing.

Adjourned to 27.10.2021.

Interim order to continue in both cases.

A photocopy of this order be placed on the file of the other connected case.”

Thereafter also, the matter not having been argued for one reason or the other, today, Mr. Gupta, learned counsel for the complainant-respondent no. 2, submits that the ratio of the judgment in Abrahams' case (*supra*), would not be applicable, in view of the fact that the petitioner in CRM-M-35639-2020 was admitted to bail on 09.11.2020, on a statement having been made on 06.11.2020 to the effect that the matter may be referred to mediation as the dispute is between close family relations.

It is seen that thereafter on 09.11.2020, counsel for the petitioner had submitted that the petitioner being in jail, even a compromise could not be attempted and therefore to enable the parties to reach some kind of settlement (if possible), the petitioner in CRM-M-35639-2020, had been admitted to interim bail on 09.11.2020.

He thus submits that the mediation proceedings having failed, the petitioners cannot be allowed to continue to remain on bail.

In that context, it is to be observed by this court that though undoubtedly the petitioners may have been initially been released on bail to enable the parties to come to a settlement; however, thereafter the State having filed a reply to the effect that their custodial interrogation is not required, and

with learned counsel for the parties being *ad idem* that the report under the provisions of Section 173 of the Cr.P.C. has been submitted to the competent court and in fact even a charge has been framed by the trial court, in my opinion the contention of learned counsel for the complainant cannot be accepted, not just in view of the fact that obviously once the trial has commenced the custodial interrogation by the investigating agency would not be required, but also in view of the stage of the trial itself.

It is also to be observed that even if the matter had not reached the stage of trial, if the investigating agency itself made a statement to the effect that the petitioners' custodial interrogation is not required, in terms of the ratio of the aforesaid judgment in (in MC Abrahams' case), even a Constitutional court would not normally direct their arrest.

That being so, without making any comment on the actual merits of the case, the petitions are allowed and the interim orders passed earlier are made absolute, on the same terms and conditions.

A photocopy of this order be placed on the file of the other connected case.

March 14, 2022
nitin

Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)
JUDGE

Yes
Yes.