

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

CRM-M-42639-2022

Date of Decision: 16.9.2022

Jaimeet

... Petitioner

Versus

State of Haryana

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Sunil Saharan, Advocate for the petitioner

Mr.Himmat Singh, DAG, Haryana

...

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.506 dated 15.11.2021 under Section 42 of the Prison Act, 1894 registered at Police Station Civil Lines, Hisar, District Hisar.

Learned counsel for the petitioner contends that present case has been lodged falsely against the petitioner. The mobile phone was recovered from co-accused Lokender and no recovery has been made from the petitioner.

On the contrary, learned counsel for the State submits that during checking on 15.11.2021, Warder Rajender Kumar from Central Jail-1, Hisar alongwith Deputy Superintendent Central Jail-1 went to room no.2 of Block No.3, inmates Lokender, Jaimeet and Jai Bhagwan were sitting there. Upon search, a mobile phone Kechadda having sim was recovered from the co-accused Lokender. During investigation, call detail record of the sim was obtained. From the call record, it transpired that the mobile phone was used by the petitioner for making calls to his father Sandeep. Co-accused Jai Bhagwan has also made calls to his family members. Learned counsel further submits that the

petitioner is a habitual offender. There are about seven other cases registered against the petitioner and out of seven cases, in four of the cases, he is facing trial. Learned counsel for the State submits that his custodial interrogation is required to enquire about the manner in which the phone was obtained and further investigation in the matter.

Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role attributed to him. Investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence as to how mobile is being used in jail premises. Furthermore, the antecedent of the petitioner is also not good as he is already involved in seven other cases. 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.

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

16.9.2022
MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No