

CRM-M-54764-2021
Date of Decision: 24.03.2022

Versus

State of Haryana and another ...Respondents

Present: Mr. Arun Gupta, Advocate for
Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. N.S. Panwar, DAG, Haryana.

(Through Video Conferencing)

JASGURPREET SINGH PURI, J.(ORAL)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.389, dated 15.08.2020 under Sections 285, 392, 394, 506 and 34 IPC, 1860 and Section 25 of Arms Act, 1959 registered at Police Station Gharaunda, District Karnal.

2. Learned counsel for the petitioner Mr. Arun Gupta, Advocate appearing on behalf of Mr. Pankaj Bali, Advocate has submitted that this Court had granted interim protection to the petitioner vide order dated 31.01.2022 and in pursuance thereof, the petitioner has joined the investigation and has therefore, prayed that the order dated 31.01.2022 may be confirmed. He has submitted that it is a case where an FIR was lodged by one Dharampal, respondent No.2, by alleging that at his dhaba, four persons had come and by pointing weapons towards him, they had taken away Rs.60,000/-

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I attest to the accuracy of
this order.

from the counter by opening the same and one of the four persons co-accused

namely, Vikas had also threatened that the complainant will be killed. The incident was also recorded in the CCTV camera. Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and it was only after some time on the disclosure statement of the co-accused namely, Vikas that name of the petitioner has been nominated. He further submitted that the petitioner was only a customer at the dhaba and was sitting there having food and thereafter since the main accused Vikas wanted him to depose against the complainant to which the petitioner refused, consequently he falsely named the petitioner in the present case and therefore, the petitioner was nominated as co-accused in the present FIR. Learned counsel has submitted that since the petitioner has joined the investigation, the interim protection granted to him may be confirmed.

3. On the other hand, learned State counsel has submitted that it is a case where although, the petitioner has joined the investigation but has not at all cooperated with the investigation process and he did not even tell as to how and from where the weapons were sought and in fact, a gold chain was also snatched from the complainant, which has not been recovered. He submitted that apart from the aforesaid position, the present petition is liable to be dismissed on the ground that the petitioner has actively concealed material facts from this Court by filing the present petition and therefore, the petitioner is not entitled for the grant of concession of anticipatory bail. He has submitted that the petitioner has stated in paragraph 9 of the petition that he is not involved in any other case by stating that he has clean past record and has never indulged in any illegal activity or involved in any FIR but in fact, while referring to paragraph No.3 of the affidavit filed by State, he submitted that the petitioner is involved in two more FIRs i.e. FIR No.325 dated 04.12.2010 under Section 392 IPC & Sections 25/54/59 of Arms Act registered at Police

Station Sadar Panipat, District Panipat, in which he was convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of fine, to further undergo simple imprisonment for five months. Another FIR No.1245, dated 04.12.2016, under Sections 498, 323, 354, 376, 377, 511, 506 and 34 IPC was registered against the petitioner at Police Station Chandni Bagh, Panipat, District Panipat and the same has been quashed by this Court. Learned State counsel has submitted that aforesaid FIR has been quashed on basis of compromise. He submitted that be that as it may, the petitioner was duty bound to have disclosed his antecedents at the time of filing of the petition. He further submitted that the petitioner along with other three persons had formed a gang and looted the dhaba and so far as the other co-accused namely, Vikas is concerned, he is facing about 10/15 cases of similar nature. He further submitted that in the CCTV footage camera, the petitioner can be seen although, the weapon was in the hands of other co-accused namely, Vikas. Learned State counsel has further submitted that the recovery of the amount and the gold chain is essential in the present case and apart from the same with regard to the modus operandi of the present case, the petitioner has not disclosed anything at the time of the investigation and therefore, for the purpose of elicitation of truth, the custodial investigation of the petitioner is required.

4. Mr. Sushil Jain, Advocate has also caused appearance on behalf of the respondent No.2/complainant. He specifically submitted that the other co-accused Vikas is involved in as many as 13 other cases and he is a gangster. He further submitted that the petitioner can be very well seen in the CCTV footage, although, it can be seen that he was not carrying the weapon but he was a part of that group of persons, who were pushing and slapping the dhaba owner and therefore, the petitioner does not deserve the concession of

anticipatory bail.

5. Mr. Arun Gupta, Advocate appearing for the petitioner while replying to the submissions made by the learned counsel for the State as well as learned counsel for the complainant has submitted that in fact, there was an old enmity between the co-accused Vikas and the complainant Dharampal and after the present FIR, the complainant and his companion had killed two other co-accused of the present case namely, Satish and Munish and so far as the present petitioner is concerned, he has no role to play and since he has joined the investigation, the interim bail granted to him may be confirmed.

6. I have heard the learned counsel for the parties.

7. Although, in pursuance of the order passed by this Court, the petitioner has joined the investigation but as per the objection taken by the learned State counsel, the petitioner never cooperated with the investigation process and his joining the investigation was only a formal exercise. However, another aspect requires consideration since the same also goes to the root of the matter and would test the bona fide of the petitioner. The petitioner has stated in paragraph 9 of the petition, which is as follows :-

“9. That the petitioner is having clean past record and never indulged in any illegal activity, nor involved in any other FIR, nor is a proclaimed offender.”

Perusal of paragraph 9 of the petition would show that the petitioner has categorically stated that he has clean past record and never indulged in any illegal activity, nor involved in any other FIR, nor is a proclaimed offender. The present petition is supported by an affidavit of the petitioner, at page No.8 of the paper-book. The affidavit has been duly verified by him stating that the contents of the affidavit are true and correct to the best of his knowledge and belief and nothing has been concealed therein.

However, as per the reply filed by State and the arguments raised by the learned State counsel, the petitioner was earlier involved in two FIRs out of which in one FIR, he has been convicted and in the other FIR, the proceedings has been quashed by this Court on the basis of compromise. It was the solemn duty of the petitioner to have disclosed this fact before this Court while filing the present petition. Rather, on the other hand, instead of disclosing this fact, he has stated in paragraph 9 of the petition supported by an affidavit that he has clean past record and has never indulged in any illegal activity, nor involved in any other FIR. Therefore, the question would be that due to this conduct of the petitioner whether he is entitled for the grant of concession of anticipatory bail or not.

8. This Court finds force in the arguments advanced by learned State counsel that due to such kind of active concealment, the petitioner is not entitled for the grant of anticipatory bail. Apart from the same, the allegations against the petitioner were serious in nature and the other co-accused namely, Vikas is involved in about 13 cases and the petitioner was also seen in the CCTV footage camera although he was not holding any weapon but he was a part of the group who was pushing the complainant. The old rivalry between the complainant and the other co-accused also becomes relevant in view of the arguments raised by the learned counsel for the petitioner that the complainant party had killed the two accused of the present case after the present incident. Therefore, the arguments raised by learned State counsel that non-supply of any information by the petitioner and non-recovery of cash and gold chain, would disentitle the petitioner for the grant of anticipatory bail carries weight and the arguments advanced by learned State counsel cannot be ignored.

9. Therefore, considering the totality of facts and circumstances of the present case, this Court does not deem it fit and proper to grant the

concession of anticipatory bail to the petitioner. Consequently, the present petition is hereby dismissed.

10. It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 24, 2022
Manpreet

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