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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2658-2023

Date of decision : 08.02.2023

SUDESH @ SUDHA & ANOTHER

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lekh Raj Nandal, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioners in case FIR No.238 dated 16.04.2021 registered under Sections 147, 148, 186, 323, 353, 307, 427, 149 of IPC, 1860 (Section 147 of IPC was added later on) at Police Station City Rohtak, Haryana.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that 2/3 suspicious persons along with illegal weapons were roaming in Rainakpura, Khokracot. If a raid was conducted, they could be apprehended along with weapons. Thereafter, the police party proceeded to the spot and saw that 3/4 boys who on seeing the police party started moving away. When they were asked to stop, on inquiry one boy disclosed his name as Annu son of Ram Pal (petitioner No.2) and the other boy disclosed his name as Rohit son of Suresh @ Sudha. The said

boy started shouting loudly during the inquiry. After hearing the noise Sudha (petitioner No.1) wife of Rampal and Ankit son of Ram Pal reached at the spot. The police officials informed the said persons about the reason for the inquiry. On hearing this, the aforementioned persons raised their voices and called for 15/20 persons who were armed with brickbats and sticks in their hands. With an intention to kill the police party the ASI along with other police officials and the vehicle used by them was attacked. He was injured along with other officials and the glass of the vehicle was broken with stones and sticks. HC Pardeep being severely injured was sent to General Hospital, Rohtak along with ASI Manjeet.

Based on the aforementioned information, the FIR came to be registered at the instance of ASI Rajesh.

Notice of motion was issued on 18.01.2023 pursuant to which a reply has been submitted by way of an affidavit of Ravinder, HPS Deputy Superintendent of Police, Rohtak. As per the said reply, the medical examination of injured HC Pardeep was got conducted in which the doctor mentioned injury No.1 and advised a surgeon's opinion. After conducting the CT Scan, X-ray report and test report, the doctor opined the nature of injury to be grievous. Subsequently, it was declared to be "dangerous to life". Similarly, lady constable Jyoti also suffered two injuries with a blunt weapon which were found to be "simple in nature". During the course of investigation, the assailants were identified as Rohit son of Suresh, Ankit son of Rampal, Annu son of Rampal and Sudesh @ Sudha wife of Rampal.

3. The learned counsel for the petitioners contends that no specific injury has been attributed to any of the accused. In fact, they have been falsely implicated in the present case at the instance of the police. The petitioners are first-time offenders with no criminal antecedents as they were ready and willing to join investigation, they may be granted the concession of anticipatory bail.

4. On the other hand, the learned State counsel contends that the petitioners were duly named in the FIR. As per the medical record, the injured HC Pardeep is stated to have suffered a depressed fracture of the left frontoparietal bone and a fracture of the left zygomatic bone. Craniotomy was done with elevation of the depressed fracture. The injury suffered therefore, declared as “dangerous to life”. Looking at the nature of injuries suffered by the police personnel and the allegations levelled against the petitioners, they were not entitled to the grant of anticipatory bail.

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

6. Admittedly, the petitioners are named in the FIR. The allegations against the petitioners and their co-accused is that they attacked the police party with brickbats and sticks. HC Pardeep has received injuries on his skull which have been found to be dangerous to life. Similarly, lady constable Jyoti has also received injuries. Therefore, such kind of an assault on a public servant performing his duties cannot be condoned. The nature of the allegations itself do not entitle the petitioners to the grant of anticipatory bail.

7. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that***

alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

8. In view of the above discussion, the custodial interrogation of the petitioners is required not only to get recovered the weapons but also to identify the co-accused. Further, the seriousness of the allegations also do not entitle the petitioners to the grant of anticipatory bail. Therefore, the present petition devoid of merit and is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

08.02.2023
JITESH