

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

104

CRM-M-2856-2023
Date of decision : 19.01.2023

Babu Ram @ Tiniya

....Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Jasvir Singh Dhaliwal, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.438 dated 17.08.2022 registered under Sections 379-A, 120-B and 34 of the Indian Penal Code, 1860 at Police Station City Fatehabad, District Fatehabad.

The above-said FIR was registered on the complainant made by complainant-Sumitra Devi alleging that on 17.08.2022 at about 06:30 p.m. when she was cleaning the outside portion of her house outside the gate then 02 unknown persons came on a motorcycle. Out of them one worn helmet and other had covered his face. Thereafter, one young boy came to her after descending from the motorcycle and started talking with her and then suddenly he snatched the golden chain weighing 02 tollas from her neck and fled from the spot on the motorcycle. The said incident was captured in the CCTV camera installed near the house of the complainant.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case on the basis of disclosure statement made by co-accused Sonu which is a very weak type of evidence. Sonu is the nephew (Bhanja) of the petitioner and he is the main accused who had snatched chain from the complainant. The petitioner has no connection with the co-accused Sonu as both are living on different places. Except the disclosure statement of co-accused Sonu, there is nothing on record to connect the petitioner with the alleged incident. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. Munish Sharma, Asstt. A.G., Haryana, who is present in the Court, accepts notice on behalf of the respondent-State and opposed the present petition on the ground that the petitioner had actively participated in the crime with his Nephew (Bhanja) Sonu and in his disclosure statement Sonu had disclosed the name of the petitioner. The petitioner is also involved in 02 other cases. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The snatching incidents are increasing day by day and if such type of

persons are released on bail, nobody would be safe and no women would be able to move safely wearing such type of ornaments.

Moreover, the antecedents of the petitioner are also not good as he is already involved in 02 other criminal cases. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case, the custodial interrogation of the petitioner is necessary. 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 ensconded 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.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

19.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No