

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

105

CRM-M-5269-2023

Date of decision : 02.02.2023

Farukh

....Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Ms. Nafeez Ahmad Khan, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No.173 dated 21.08.2022 registered under Sections 3/13(1), 8/13(3) and 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (to which Section 411 of the IPC has been added later on) at Police Station Bicchore, District Nuh.

Brief facts of the case are that the on 21.08.2022, when Head Constable Jai Singh along with other police officials were present at Madyaki Turn for doing patrolling duty, they received a secret information that Farukh (the petitioner) and co-accused Rukmuddin as well as 3-4 other persons were indulged in the act of cow slaughtering near Monu Brick Kiln, Forest Area of Village Singar. On the basis of said information raid was conducted, 5-6 persons managed to flee away. On search, 120 kgs. of beef, weighing scale, weights, knife, axe, rope, a bag and 2-3 motor-cycles were recovered from the spot.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. Neither the

petitioner was apprehended on the spot nor any recovery has been effected from him. Apart from the secret information, there is no other evidence with the prosecution to connect the petitioner with the alleged crime. Co-accused Rukmudin has already been granted regular bail by the trial Court. The petitioner is not involved in any other case. 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. Learned State counsel has vehemently opposed the present petition and submits that for thorough investigation of the case custodial interrogation of the petitioner is required.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The petitioner is specifically named in the secret information. While fleeing from the spot, the petitioner along with other co-accused were identified by the secret informer. 120 kgs. of beef, weighing scale, knife, axe, rope and 03 motor-cycles were also recovered from the spot.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case, 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.

02.02.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No