

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CRM-M-6560-2023

Date of decision : 20.04.2023

Vikas Kumar

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Naresh Kumar Khepar, Advocate
for the petitioner.

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

ASHOK KUMAR VERMA, J. (ORAL)

1. 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.647 dated 01.10.2021 registered under Section 25 of the Arms Act, 1959 and Sections 365 and 394 of the Indian Penal Code, 1860 (to which Sections 395, 397, 420, 467, 471, 506 and 120-B read with Section 34 of the IPC were added later on) at Police Station Sector-7, Faridabad.

2. Status report dated 12.04.2023 by way of an affidavit of Sh.Surender Sheoran, Assistant Commissioner of Police, Crime, Faridabad has been filed in the Registry which is taken on record.

3. Brief facts of the case are that the above-said FIR was registered on the basis of complaint made by Saurabh Kalra alleging that he is running a shop dealing in sale and purchase of second hand

cars. On 30.09.2021 at about 05:00 p.m. 02 persons came at his showroom and said that they want to test drive of Scorpio Car parked in his showroom on which his salesman Udham Singh accompanied them for a test drive. After sometime, phone of salesman was found switched off. Thereafter, he informed the police and in the evening at about 06:30 p.m. his salesman Udham Singh called him and told him that while taking test drive, the car was stopped near Ozone Centre, Sector-12, Faridabad where 02 more persons boarded the vehicle and they pointed a pistol at him and threatened to kill him, if he raised an alarm. They threw him from the car near Village Bagpur and fled from the spot along with the car. During investigation, it was found that accused namely Sachin and Arvind have been arrested in FIR No.1191 dated 08.10.2021 registered under Sections 411, 413, 414 and 482 of the IPC at Police Station Sihani Gate, District Ghaziabad, Uttar Pradesh and the snatched Scorpio car was recovered from their possession and they used forged number plate on the said car. They were arrested in this case on 29.10.2021. The victim has identified them to be the same persons who had snatched the car in the test identification parade.

4. Learned counsel for the petitioner submits that the petitioner was not present on the spot. He is not named in the FIR and has been falsely implicated on the basis of disclosure statement made by co-accused Deepak which is a very weak type of evidence. Co-accused Sahin has already been granted regular bail vide order dated 12.07.2022 passed by the Coordinate Bench of this Court in CRM-M-23711-2022

and co-accused Arvind has been granted regular bail vide order dated 22.07.2022 passed by learned Additional Sessions Judge, Faridabad. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready and willing to join the investigation. Therefore, the present petition may be allowed.

5. On the other hand, learned State counsel has vehemently opposed the present petition in terms of status report filed by the State and submits that in his disclosure statement co-accused Deepak has specifically named the petitioner as one of the accused in the alleged offence. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

6. Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. As per the status report, the petitioner is required to be interrogated regarding forged number plate, to demarcate the place of occurrence and his test identification parade is also required to be conducted. There is sufficient evidence against the petitioner regarding his involvement in the commission of crime as his name has been cropped up in the disclosure statement of co-accused Deepak, who is brother-in-law of the petitioner.

7. Moreover, the investigation is still going on and therefore, custodial interrogation of the petitioners is necessary for finding out the

modus operandi of commission of the offence. 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.”

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

20.04.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No