

CRM-M-8856 of 2023

2023:PHHC:037975

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

CRM-M-8856 of 2023

Date of decision: 10.03.2023

Amit

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Arjun Dhingra, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.18 dated 20.01.2023 under Sections 454/380 IPC, registered at Police Station Rajendra Park, Gurugram.

Present FIR was registered on the complaint of Manjeet to the effect that on dated 16.01.2023, his wife informed him on mobile that when she returned home from outside, she found the lock of main gate broken, the LED kept in the first floor broken, the items kept in the room scattered and gold ring was missing and also of 50,000/- in cash; that on being enquired from the neighbours it was informed that petitioner-Amit had come on motor cycle and another boy came on another motor cycle and then petitioner-Amit broke lock of the house and committed theft.

CRM-M-8856 of 2023

2023:PHHC:037975

On issuance of notice of motion, status report by way of affidavit of Shiva Archan, Assistant Commissioner of Police, Traffic Hqrs., Gurugram, has been filed on behalf of respondent-State, which is taken on record.

Learned counsel for the petitioner contends that petitioner is innocent and has been falsely implicated in the present case. Complainant and petitioner are neighbours and the alleged incident is of 16.01.2023 whereas FIR has been registered after a delay of four days i.e. on 20.01.2023 that too on the false pretext. Petitioner has been implicated by the complainant just to avoid repayment of friendly loan of Rs.80,000/-, which the complainant owe to the father of the petitioner namely, Suraj Bhan. With regard to another case pending against the petitioner bearing FIR No.341 dated 25.10.2022 under Section 25(1)(b) of the Arms Act, 1959, registered at Police Station Rajendra Park, Gurugram, he submits that in the said FIR petitioner is on police bail. He further submits that Sunny who gave statement against the petitioner is the cousin of the complainant. He further submits that petitioner is ready and willing to join the investigation.

Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner by submitting that to recover the stolen articles, custodial interrogation of the petitioner is required. She further submits that petitioner is involved in one more case bearing FIR No.341 dated 25.10.2022 under Section 25(1)(b) of the Arms Act, 1959, registered at Police Station Rajendra Park, Gurugram, in which he was granted police bail, however, after filing of

CRM-M-8856 of 2023

2023:PHHC:037975

challan, he has not appeared before the trial Court for grant of regular bail. Therefore, present petition is liable to be dismissed.

I have heard learned counsel for the parties and perused the record.

Paras 3 to 8 of the status report filed by the respondent-State read as under: -

“3. That the investigation of the present FIR was started by E/ASI Ashok Kumar. During investigation, the place of occurrence was inspected and the site plan was prepared. The statements of the witnesses were recorded who stated that they had saw the petitioner Amit Kumar while breaking the lock and stealing from the house. The raids were conducted to apprehend the petitioner. However, he could not be found.

4. That on 03.02.2023, the call details and location details of mobile no. 8766229040 of the complainant, mobile no. 8373942129 of the wife of the complainant and mobile no. 8059191311 and 8950040656 of the petitioner Amit were obtained. From the perusal of the said details, the location of mobile no. 8950040656 and 8059191311 of the petitioner Amit was found to be of Village Dhankot i.e. the place of occurrence. The investigation of the present case is going on.

5. That the plea taken by the petitioner that Sunny (who gave the statement against the petitioner) is cousin of the complainant, is not sustainable as the same does not minimize the offence committed by the petitioner. Further, the plea taken by the petitioner regarding his implication in the present case by the complainant to avoid the alleged friendly loan of Rs. 80,000/- owed by the complainant to the father of the petitioner, is not sustainable as no complaint in this regard was ever received by the police.

CRM-M-8856 of 2023

2023:PHHC:037975

Moreover, the plea taken by the petitioner regarding the alleged delay of four days in registration of the FIR, is not sustainable as the complaint was received by the police on 20.01.2023 and the present FIR was registered on the same date i.e. 20.01.2023. Thus, there is no delay on the part of the police in registration of the FIR

6. That the petitioner has taken unscrupulous pleas in the present petition as well as during the course of hearing of the present petition on 20.02.2023, just to go scotfree from the offence committed by him.

7. That the petitioner has not joined the investigation of the present case till date. The custodial interrogation of the petitioner is required for recovering the gold ring and the amount of Rs. 50,000/- of the complainant, for obtaining information about the modus-operandi of the present crime, and for obtaining the details about the other person who had accompanied him at the time of present crime.

8. That as per available record, the petitioner has been found to be involved in another case bearing FIR No. 341 dated 25.10.2022 u/s 25(1-B)(a) Arms Act P.S. Rajendra Park, Gurugram. The petitioner was granted police bail in the said FIR, however, despite notices, he is not appearing in the Ld. Court for obtaining regular bail at the time of submission of challan.”

Petitioner has specifically been named by eyewitness Sunny neighbour of the complainant that he had seen the petitioner along with an unknown person trespassing the house of the complainant. Moreover, petitioner is involved in one more case bearing FIR No.341 dated 25.10.2022 under Section 25(1)(b) of the Arms Act, 1959, registered at Police Station Rajendra Park, Gurugram,

CRM-M-8856 of 2023

2023:PHHC:037975

in which despite repeated notices he has not appeared before the trial Court.

As per law laid down by the Hon'ble Supreme Court in *State of Madhya Pradesh v. Pradeep Sharma (2014) 2 Supreme Court Cases 171*, power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his/her liberty.

In view of the above, this Court is not inclined to grant anticipatory bail to the petitioner as his custodial interrogation is required to recover the gold ring and Rs.50,000/- stolen from the house of the complainant and to get the details of other person who accompanied him in committing the offence. Hence, present petition being devoid of any merit is dismissed.

10.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No