

CRM-M-34014-2021

::1::

229

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34014-2021 (O & M)
Date of decision: 22.09.2023

Rashmi Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Varinder Singh, Advocate,
for Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The petitioner seeks the grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.594 dated 08.12.2020 under Sections 395, 420, 120-B IPC registered at Police Station Sector 5, Panchkula, District Panchkula, Haryana.

On 20.08.2021, the following order was passed in this case:-

“The petitioner seeks grant of anticipatory bail in a case registered vide FIR No.594 dated 8.12.2020 registered at Police Station Sector 5, Panchkula, District Panchkula, Haryana under Sections 395, 420 and 120-B of Indian Penal Code.

CRM-M-34014-2021

::2::

229

The FIR was lodged at the instance of Kunal Chopra son of Surender Chopra, wherein he has stated that since he was interested in buying a house at Panchkula, his friend namely Sanjeev suggested him to meet Kushwinder Sharma. When the complainant spoke to Kushwinder Sharma over phone, said Kushwinder Sharma represented that he would get him a house of NRI at Panchkula at half the price and that an amount of `50 lakhs would be required to be paid to the caretaker. It is alleged that pursuant to the said representation the complainant went to Panchkula and stayed at Hotel Shiraj-2, Sector 5, Panchkula and informed Kushwinder Sharma. After about half an hour Kushwinder Sharma accompanied by 2 constables and 5 unknown persons came there and picked up his bag containing cash, while alleging that the complainant was indulging in gambling and 'satta' and that he should disappear from there lest he could be jailed. The complainant noted down the registration number of the Bolero vehicle and also followed the same and went to the Police Station, Sector-14. It is alleged that the FIR was recorded on 8.12.2020 i.e. after about 12 days of the occurrence.

The accused were arrested and some recoveries were also effected from them. The matter is also stated to have subsequently been compromised amongst the parties. It is the case of prosecution that the accused, who were arrested suffered disclosure statements to the effect that Rashmi (petitioner) was also associated with them and that she was present at the place of occurrence in her car and that she had also taken her share in the money involved. It is further the case of prosecution that the call detail record also disclosed that she was present at the spot and had contacted the accused over phone.

CRM-M-34014-2021

::3::

229

Learned counsel for the petitioner has submitted that there is hardly any evidence worth credence to connect the petitioner with the occurrence and that her mere presence at the place of occurrence in a car is not sufficient to prove her complicity in the matter.

Notice of motion for 18.1.2022.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to her furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C. ”

The said order continued from time to time.

However, in pursuance to the Court notice, the petitioner appeared before the Court of Judicial Magistrate Ist Class, Panchkula, on 12.04.2022 on which date the following order was passed:-

“Today the case was fixed for arguments on charge as well as for awaiting FSL report.

Accused Rashmi has appeared in pursuance of court notice issued against her and moved an application for seeking concession of regular bail. Accused Rashmi is on anticipatory bail vide order dated 20.08.2021 passed by Hon’ble Punjab and Haryana High Court, Chandigarh. In my view no useful purpose would be served by sending accused Rashmi behind the bars, hence regular bail application moved on behalf of accused Rashmi is allowed and accused Rashmi is admitted to regular bail on furnishing bail bonds in the sum of Rs.40,000/-

CRM-M-34014-2021

::4::

229

with one surety in the like amount. Applicant submitted that she is not able to furnish the surety and requested that she may be permitted to furnish the surety bonds on the next date of hearing. Heard. Allowed. Personal bonds of the applicant are accepted and attested.

Separate applications for exemption from personal appearance moved on behalf of the accused Sanjeev Sadh, Gurdeep @ Deepak and Ajay. Ld. APP for the State at bar has stated her no objection on the applications. Heard. In view of the contents cited therein the present applications are allowed and personal appearance of the accused Sanjeev Sadh, Gurdeep @ Deepak and Ajay is exempted for today only. It is clarified that no more exemption application shall be allowed in future on behalf of the any accused.

Arguments on charge not advanced. A date is requested by learned counsel for the accused. Heard. Not opposed. Allowed. Now to come upon 29.04.2022 for said purpose. The same date is also fixed for furnishing surety bonds on behalf of accused Rashmi.”

A perusal of the aforementioned order passed by the Judicial Magistrate Ist Class, Panchkula, would show that it has been passed in the violation of the judgment of the Hon’ble Supreme Court in ‘***Rukmani Mahto versus State of Jharkhand (Special Leave to Appeal (Crl.) No.2411 of 2016 decided on 03.08.2017)***’ wherein in Paras 10 & 11, it has been held as under:-

“10. When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the

CRM-M-34014-2021

::5::

229

accused to appear and surrender before the learned trial court and seek regular bail. The predicament of the subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior Court meaningless.

11. If this is a practice that is prevailing in some of the subordinate Courts in the Country and we have had notice of several such cases, time has come to put the learned subordinate Courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged. We, therefore, direct that a copy of this order be forwarded to the Director of all Judicial Academies in the country to be brought to the notice of all judicial officers exercising criminal jurisdiction in their respective States.”

Though the petitioner has joined investigation and had appeared before the Court pursuant to its notice, she was not entitled to move an application for the grant of regular bail and the Court was certainly not

entitled to release her on regular bail knowing that her petition for the grant

CRM-M-34014-2021

::6::

229

of pre-arrest bail was pending in this Court. Therefore, the present petition stands dismissed and the order of regular bail dated 12.04.2022 passed by the Judicial Magistrate Ist Class, Panchkula stands recalled. The petitioner is directed to surrender before the Trial Court within 15 days failing which the investigating agency shall apprehend her and take her into custody after which she is at liberty to apply for regular bail in accordance with law.

A copy of the judgment in '*Rukmani Mahto versus State of Jharkhand (Special Leave to Appeal (Crl.) No.2411 of 2016 decided on 03.08.2017)*', and this order be specifically sent to the Magistrate who has passed the order dated 12.04.2022 and be also circulated to all the District & Sessions Judges in the States of Punjab, Haryana and U.T., Chandigarh for strict compliance as indicated in the letter by the Chandigarh Judicial Academy, Chandigarh, bearing No.Dir/CJA/2017/2276 dated 28.08.2017

The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

September 22, 2023
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No