

CRM-M-32830-2022 (O & M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32830-2022 (O & M)

Date of decision: 15.02.2023

Sushil Kumar Sardana

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sanjay Verma, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Sandeep S. Majithia, Advocate,
for the complainant.

JASJIT SINGH BEDI, J. (Oral)

CRM-3047-2023

This is an application for placing on record the short counter affidavit alongwith Annexure R-14 of the complainant.

For the reasons mentioned in the application, same is allowed.

The short counter affidavit alongwith Annexure R-14 of the complainant is taken on record.

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The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.164 dated 09.05.2021 under Section 306 IPC registered at Police Station Kunjpura, District Karnal.

2. The brief facts of the case are that the statement of Mukul son of Suresh Kumar Sardana (deceased) was recorded to the effect that they

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was married while his younger sister Kirti was unmarried. His father-Suresh Kumar Sardana was an agriculturist. His father and his uncle (Tau) Sushil Kumar Sardana (petitioner) used to quarrel with each other over land and house. His uncle and his father had an *aadat* (broker shop) in the village of Ghid Anaj Mandi over which they first fought. At that time also, his father had tried to commit suicide. On 08.05.2021, his father left the house to go to the Mandi at about 6.00 a.m.. His uncle-Sushil Kumar Sardana (petitioner) and his grandfather-Khan Chand and his uncle's son-Yogesh Kumar were already present at the Grain Mandi shop. At the shop, his father and his uncle-Sushil Kumar Sardana (petitioner) quarreled and his father was beaten up regarding the distribution of land and house. He (Suresh Kumar Sardana) was told that he would get nothing out the land and the house. This fact was disclosed to him (complainant) by his uncle (fufa) Vinod Kumar's son, namely, Sukhdayal. At about 4.14 p.m., their servant Kanwarpal call him (complainant) and told him to come to the fields as his (complainant's) father had consumed poison and had died. On this, he (complainant) alongwith his mother-Nirmala, sister Kirti and his uncle-Sushil Kumar Sardana (petitioner) alongwith Yogesh Kumar (son of Sushil Kumar Sardana), aunt Pooja and Himanshu (daughter of Sushil Kumar Sardana-petitioner) reached the fields. They (complainant side) saw that his (complainant's) father was lying dead in the field. He was taken to Amritdhara Hospital, Karnal where he was declared dead. His father had committed suicide on account of fights and beatings by consuming pesticides. Legal action was sought.

Based on the aforementioned allegations, the present FIR came to be registered.

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3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated. No suicide note has been left behind by the deceased. The cause of death was not certain. On the basis of the affidavit (Annexure P-1) of the present complainant-Mukul son of late Shri Suresh Kumar, a cancellation report had been prepared. The investigating agency had also found that there was a dispute between the parties regarding the distribution of property. It was only later that the daughters of the deceased-Suresh Kumar Sardana submitted a CCTV recording from the camera installed outside the neighbouring shop of Rameshwar Singh after 08 months of the incident that the investigation was conducted again by the police with the permission of the Court. In fact, the CCTV footage would not further the case of the prosecution as no fight seems to have taken place between the petitioner and the deceased. Actually, the deceased always misbehaved with his father-Khanchand Sardana, who was the age of 88 years and demanded property for himself. His father-Khanchand Sardana did not want to give his self-acquired property to the deceased. The deceased had not committed suicide but had died due to electric shock. Since the property dispute had been settled as per family settlement and Arbitration Award dated 10.06.2021 (Annexures P-3 and P-4 respectively), the question of harassment of the deceased at the hands of the petitioner did not arise. The telephonic conversation which had allegedly taken place between the deceased and his brother-in-law (Sham Madan @ Shyam Sunder) did not further the case of the prosecution as the said Sham Madan @ Shyam Sunder had furnished an affidavit dated 07.11.2022 denying that the same had taken place on the date of suicide or any date soon before. A copy of the said affidavit is placed on record as Mark 'A'. Further, Vinod

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argument between his brothers-in-law (petitioner and deceased) vide affidavits dated 07.11.2022. The same is placed on record as Mark 'B'. Since the petitioner was of the age more than 60 years and a heart-patient regularly taking treatment, he was entitled to the concession of anticipatory bail. Even otherwise, taking the allegations to be true, the ingredients of the offence under Section 306 IPC were not made out.

4. The learned counsel for the complainant, on the other hand, has filed a reply dated 09.08.2022. While relying on the same, he contends that the petitioner had deliberately not disclosed the fact that as per the report of the Chemical Examiner (Annexure R-1), the cause of death was poisoning and not electrocution. Initially, the complainant-Mukul had lodged a complaint against accused but since he was a youngster, he was pressurized by the accused party and was made to believe that the deceased had died due to an electric shock. Thereafter, he alongwith his sisters came to know of a telephonic conversation between the deceased-father and his brother-in-law (jija) few days prior to the date of occurrence. A perusal of the conversation (Annexure R-2) would show that the deceased felt aggrieved at the hands of the petitioner. In fact, he was telling his brother-in-law Sham Madan that he had been beaten up by the accused party and if an untoward incident occurred then he (Sham Madan) should not complain that he (deceased) had not told him (Sham Madan) earlier. He further contends that Sham Madan had got recorded his statement in support of the said telephonic talk with the investigating agency. A perusal of the CCTV footage on the day of the occurrence would show that the deceased was beaten up as was apparent from his torn clothes clearly visible in the photograph (Annexure R-10). Because of the aforesaid facts, a fresh complaint had been moved to revive

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harassed earlier but even on the date of the incident, he was beaten up. Therefore, continuous harassment accompanied by beatings on the date of occurrence would amount to abetment. The serious nature of the allegations did not entitle the petitioner to the grant of anticipatory bail.

5. The learned counsel for the State has placed on record the Pen drive containing the conversation between the deceased and Sham Madan (Annexure R-I) vide its reply dated 04.11.2022 filed by way of an affidavit of Gaurav Fogat, HPS, DSP, Karnal-II. He contends that in view of the nature of allegations, a fair and impartial investigation was necessary which could take place only after custodial interrogation of the accused had taken place.

6. I have heard the learned counsel for the parties at length.

7. A perusal of the FIR would reveal that there are specific allegations levelled against the petitioner. The said allegations are substantiated from the telephonic conversation between the deceased on the one hand and his Jija (brother-in-law/Sham Madan @ Shyam Sunder) on the other hand. Merely because the said Sham Madan has furnished an affidavit dated 07.11.2022 denying the conversation having taken place on the date of the occurrence or any date soon before cannot prima facie exculpate the petitioner given the fact that Sham Madan is the brother-in-law of the petitioner and the deceased as his wife is their (petitioner and deceased's) sister. Further a perusal of the CCTV footage would also show that the clothes of the deceased are torn. Therefore, the allegations of continuous harassment immediately prior to the occurrence culminating in a beating on the date of occurrence and suicide soon thereafter prima facie establishes the culpability of the petitioner.

8. The Hon'ble Supreme Court in the case of **“Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870”**, held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be

considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail”.

9. Keeping in view the aforementioned discussion, the seriousness of the allegations alongwith the need for custodial interrogation do not entitle the petitioner to the grant of concession of anticipatory bail. This petition is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 15, 2023
sukhpreet

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