

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

106

CRM-M-33984-2023 (O&M)
Date of decision: 18.07.2023

Mulli @ Jabid

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Rosi, Advocate for the petitioner

Mr. Jagdish Manchanda, Addl. AG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.0348 dated 01.07.2023, registered under Section 13(2) of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 at Police Station Sadar Nuh, District Nuh, Haryana (Annexure P-1).
2. To recapitulate the facts from the FIR registered on the basis of the secret information received by the police that two individuals namely Abid and Mulli (the petitioner herein) were indulging in the business of cow slaughtering. According to the received information, the suspects were transporting cattle to Rajasthan for slaughter and if a raid was conducted they could be apprehended while committing the alleged act. Thereafter, upon reaching the location near the big Mosque in village Palla, the police, accompanied by the informer, sighted

Mulli with a cow and a bullock that were tied together. Furthermore, Abid was seen carrying a white plastic bag in his hands. After getting intimidated by the police, the accused persons, later identified by the secret informer, hastily fled the scene. On opening of the plastic bag, two knives and one axe were recovered.

3. Learned counsel contends that the petitioner has been falsely implicated in the case. No recovery has been effected from his possession. He is not involved in any other case. The petitioner is ready and willing to join and cooperate with the investigating agency.

4. Per contra, learned State counsel submits that the custodial interrogation of the petitioner is required to ascertain the whereabouts of the co-accused Abid and from where they procured the cattle and to whom they were going to deliver in Rajasthan for the purpose of slaughtering. The petitioner is also likely to tamper with evidence and influence the witnesses. There is a possibility of him fleeing from justice.

5. Heard the learned counsel and perused the file.

6. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere

of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

7. It would be apposite to refer to the provisions of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, which was enacted considering the rise in the cases of cow slaughter, whereby it prohibited the slaughtering the cows and the sale of beef in the State. Section 5 and 13(2) of which read thus:

“5. Restriction on export- No person shall expose or cause to be exported cow for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf in contravention of the provisions of this Act or with the knowledge that it shall be or is likely to be slaughtered.

13(2). Offences- Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Section 5 shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and may extend to seven years and fine which shall not be less than thirty thousand rupees and may extend to seventy thousand rupees. In case of default in payment of fine, additional imprisonment which may extend to one year may be imposed in lieu of the fine.”

8. In the case at hand, the police had received secret information specifically with regard to the petitioner and co-accused Abid indulging in cow slaughtering and on the day of the FIR, they were to take the animals to Rajasthan for the said purpose. On being spotted by the police party, they both fled, leaving behind the cattle and a white plastic bag containing two knives and an axe. The complete nexus is yet to be exposed by the police, as the investigation in the matter is underway and the whereabouts of the co-accused, besides, the others

who may be involved and the source of procurement of cattle as also their delivery require custodial interrogation of the petitioner have yet to be ascertained.

9. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

10. It is manifestly clear from the above that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

11. In **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

12. Taking into account the serious allegations; the name of the petitioner specifically having come in the secret information; factum of he having fled the spot, while his co-accused was apprehended along with the knives and axe; likelihood of his tampering/destroying the evidence can also not be ruled out; grant of pre-arrest bail in the present case shall be detrimental to the investigation, which is underway; custodial interrogation stated to be required to unravel the whole truth, thus, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

13. In view of the forgoing discussion, the present petition being devoid of merits is hereby dismissed.

14. The observations made hereinabove are meant only for the purpose

of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

July 18, 2023
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No