

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

103

CRM-M-35250-2023 (O&M)
Date of decision: 10.08.2023

Mehtarwan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Rosi, Advocate, for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed for grant of anticipatory bail to the petitioner in case FIR No. 311, dated 14.06.2023, registered under Sections 8, 13(3) and 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Sections 411, 420 and 483 of IPC at Police Station Sadar Nuh, District Nuh.
2. To recapitulate the facts from the FIR registered on the basis of the secret information received by the police that three individuals namely Jafar @ Jafrudding, Chenni @ Kamruddin and Mehtarwan (the petitioner herein) were indulging in the business of cow slaughtering. They were carrying beef on two motorcycles to transport it from village Ghasera side to village Tain and could be apprehended. Thereafter, upon erecting the barricade, all the above accused were spotted riding on two motorcycles. However, Jafar @ Jafruddin was caught while the other two fled the spot leaving behind their motorcycle, from which 112 kg beef was recovered, while from the motorcycle of co-accused Jafrudding, 118 kg beef was found.

-2-

3. Learned counsel contends that the petitioner has been falsely implicated in the case only on the basis of secret information and the disclosure by one co-accused Jafar @ Jafruddin, who was apprehended by the police. No recovery has been effected from his possession. Though, there were 5 cases registered against him, 3 of which relate to the same offence and in two, he has been acquitted by the trial Court. The petitioner is ready and willing to join and cooperate with the investigating agency.

4. On receipt of advance notice, Mr. Jagdish Manchanda, Additional Advocate General, Haryana submits that the petitioner had been named in the secret information with specific allegations of indulging in cow slaughtering and selling of beef, that they were transporting from one village to the other on two motorcycles. Co-accused Jafar @ Jafruddin was apprehended at the spot, whereas the petitioner and co-accused fled leaving behind their motorcycle, from which recovery of beef was effected as was from the above co-accused. The custodial interrogation of the petitioner is necessary as the investigation is going on and the source of procurement of cattle as details of slaughter house etc. and the location where the beef was to be delivered has to be ascertained. There is every apprehension of the petitioner fleeing from justice and tampering with evidence. He is a habitual offender, being involved in five more cases.

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

-3-

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 (in short ‘the Act’), 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 8 and 13(3) of which read thus:

“8. Prohibition of sale of beef- Notwithstanding anything contained in any other law for the time being in force, no person shall directly or indirectly sell, keep, store, transport or offer for sale or cause to be sold beef or beef products except for such medicinal purposes and in such form as may be prescribed.

13(3). Offences- Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 8 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 five years and fine which shall not be less than thirty thousand rupees and may extend to fifty 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

-4-

specifically with regard to the petitioner and his co-accused, indulging in cow slaughtering. On the day of the FIR, when they were transporting the beef from one place to the other, they were spotted by the police party, one of them, was apprehended with motorcycle and beef, while the petitioner and his co-accused managed to flee, but left their motorcycle, from which also beef was recovered. A total recovery of 230 kg beef was effected from the bags being carried on the motorcycles. The complete nexus is yet to be exposed by the police, as the investigation in the matter is underway. The other co-accused Chenni @ Kamruddin had approached this Court for grant of anticipatory bail, which when this Court was not inclined to grant, learned counsel on instructions had stated that the petitioner therein was ready to surrender, as such the petition was disposed of vide order dated 28.07.2023.

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.

xxx

xxx

xxx”

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. Keeping in view the peculiar facts and circumstances of the case, in particular that there are serious allegations against the petitioner of indulging in selling of beef, prohibited by the Act; he is a habitual offender, being involved in other criminal cases, two of which relate to the offence of similar nature; the name of the petitioner had specifically come in the secret information; factum of he having fled the spot leaving behind his motorcycle, wherefrom beef was recovered, while his co-accused was apprehended along with beef; 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

10.08.2023
Ankur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No