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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40398-2023
Date of decision :06.09.2023

PANKAJ YADAV

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.349 dated 03.06.2023 registered under Sections 307, 387, 34 IPC and 25(1-B)(a) of Arms Act at Police Station Palam Vihar, Gurugram, District Gurugram.

2. The brief facts of the case are that on 03.06.2023 information was received that a gunshot had been fired behind the CNG Pump in the area of P.S. Palam Vihar, Gurugram and one person had been caught there. On this information, the police officials reached the spot and the person who had been caught disclosed his name as Harsh @ Hunny who had been found to be injured. Meanwhile, the complainant-Pravesh Yadav submitted a complaint alleging that on 29.05.2023 at about 01.40 AM he had received a telephonic call from mobile No.7217621972 and the person on the other side had disclosed his name as Harsh @ Hunny and had demanded a sum of Rs.5 lakhs from him

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(complainant). On 02.06.2023 Harsh @ Hunny had again called him up and had again demanded money. At about 12.30 AM while he (complainant) his brother Pritam and his friends Gyan Singh and Mohan were sitting at his office, at that time, Harsh @ Hunny, Banti and Pankaj Yadav (petitioner) had come on a motorcycle and had started beating him. Bunti had taken out a pistol and fired upon his (complainant's) brother Pritam and the bullet hit him on his arm. After the occurrence, all the three had started running away but Harsh @ Hunny had fallen down and had suffered injuries. He was caught at the spot. His (complainant's) brother had been taken to General Hospital, Gurugram for treatment. Legal action was sought.

During the course of investigation, the Splendor motorcycle and Chappal were taken into police possession and empty cartridge and blood-stained earth was lifted from the spot.

Harsh @ Hunny arrested on 03.06.2023. The MLR of injured Pritam was obtained and as per the opinion of the doctor, the injuries suffered by him were grievous in nature.

The accused Bunti was arrested on 06.06.2023 and on his disclosure statement the recovery of the pistol used in the present occurrence was effected.

The report under Section 173 Cr.P.C. was presented against Harsh @ Hunny and Bunti on 22.08.2023.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The demand of the alleged amount of Rs.5 lakhs was raised by the co-accused Harsh @ Hunny. Bunti had fired upon Pritam, brother of the complainant. So far

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as the present petitioner was concerned, no specific role or injury had been attributed to him. He contends that the applicability of Section 34 IPC shall be a matter of adjudication during the course of trial. As the recoveries had already been effected and the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

4. A reply dated 30.08.2023 by way of an affidavit of Naveen Sharma, HPS, Asstt. Commissioner of Police, Palam Vihar, Gurugram has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that the offence is well-established against the petitioner as well. All the three accused came to the spot together and it cannot be said that the petitioner was unaware that his co-accused was carrying a firearm. After the occurrence, two of the accused including the petitioner managed to flee away whereas the third came to be arrested at the spot. Therefore, the nature of the allegations levelled against the petitioner and his co-accused did not entitle him to the grant of anticipatory bail because he was an equal participant in the occurrence.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** ***2022 Live Law (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:-

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"*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***

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> ***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.***

7. Coming back to the facts of the present case, as per the prosecution case, all the three accused came to the spot together. It cannot be believed that the petitioner was unaware that his co-accused was carrying a firearm which was subsequently used in the commission of offence. In fact post the occurrence, the petitioner and one of the co-accused fled away together which would also further establish common intention on the part of the petitioner as well. Therefore, as the offence is *prima facie* established and the investigation has to be taken to its logical conclusion, the petitioner is not entitled to the grant of anticipatory bail.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.

9. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

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