

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CRM-M-48186-2022 (O&M)

Date of decision: 19.01.2023

ARIF

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : None for the petitioner.

Mr. Tanuj Sharma, AAG Haryana.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 CrPC for grant of anticipatory bail to the petitioner in case FIR No.121 dated 20.05.2021 under Sections 387, 506, 120-B of the IPC and Sections 3(2)(va), 33, 89 of the SC/ST Act, 2015 registered at Police Station Sadar Tauru, District Nuh.

Briefly put, the facts as enumerated in the FIR are that the complainant have taken 25 acre land on lease in village Nijampur and care taking of said land. He belongs to Jatav caste, which falls under Scheduled caste. When he went for cultivation on his land then ex-sarpanch of Village Nijampur and his co-accused friends were making demand of Rs.2 lacs yearly as extortion for cultivating the fields and also made threats to sub-lease the land to him and his co-accused persons and also made threats to kill. When he visited his fields then accused persons abused him and made threats to implicate in false case or rape. On 14.05.2021 at about 8:30 AM accused persons met the complainant on the way, when he was going towards his fields, they demanded the money and used caste extortion money derogatory remarks and assaulted him and his family. Earlier also, accused persons gave his mobile number to one Jeenat, who used to

call him and he has recorded same. Jeenat used the mobile phone of Arif to call the complainant. Accused Kamal sent an obscene photograph on his mobile phone and made a call to him and abused him and made caste derogatory remarks and demanded extortion money. He is in fear due to the threats made by accused persons and his brother was admitted in hospital. Now his brother came to home and he narrated all incidents to his brother.

None had appeared for the petitioner on 13.12.2022, same is the position today. In compliance to the order passed on the previous date, learned State counsel has filed status report dated 18.01.2023 by way of affidavit of Ashok Kumar, HPS, Deputy Superintendent of Police, HQ, Nuh. Learned State counsel makes a reference to para 3, 4, 8, 9 and 11, which read thus:-

3. That on the above said complaint FIR No. 121 dated 20.05.2021 under section 387, 506, 120-B IPC and section 3 (2), (va) 33, 89 of SC/ST Act 2015 was registered against 1 Kamal Ex. Sarpanch, 2. Irfan S/o Chota, 3. Mustufa, 4. Tasleem sons of Harish, 5. Samsu S/o Abdul, 6. Aasif S/o Kasam, 7. Jeenat w/o Khurshid, 8. Aarif S/o Jan Mohd all resident of village Nijampur at the Police Station Sadar Tauru, District Nuh.

4. That after lodging the FIR, police initiated the investigation and during the course of investigation rough site plan was prepared statement of witnesses were recovered. Accused 1. Irfan and 2. Tasleem were arrested on 27.07.2021. During the course of investigation they suffered their disclosure vide which they admitted their involvement in commission of the said crime and demarcated the place of occurrence in pursuance thereof.

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8. That it is humbly submitted that at the time of the present occurrence the petitioner/accused was not in custody it was found that petitioner/accused was produced by the police on 17.05.2021 before the chief Id. Judicial Magistrate Nuh in connection with the FIR No. 119 dated 15.05.2021 under section 389, 506 120-B P.S. Sadar Tauru.

9. That it is humbly submitted that as per the allegation on 14.05.2021 at about 08:30AM the petitioner/accused along with other co-accused had extorted Rs. 2 lacks else they will kill him.

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11. That it is further submitted that the petitioner/accused is habitual offender. Another case FIR No. 119 dated 15.05.2021 under section 389, 506, 120-B IPC was also been registered at the Police Station Sadar Tauru against the petitioner/accused and his co-accused Jeenat, in that case accused was arrested on 15.05.2021 and Rupees one lacs has been recovered from the pocket of his pent of ransom amount, which has been extorted by the petitioner from the complainant of that case namely Chote Khan. He was interrogated, upon which he suffered his disclosure statement without any pressure and admitted the commission of present case.

He submits that there are serious allegations against the petitioner as he was involved in one more FIR as referred to hereinabove. Custodial interrogation of the petitioner is required.

Heard the learned State counsel and perused the file.

Hon'ble The Supreme Court in '**Jai Parkash Singh vs. State of Bihar**' reported as (2012) 4 SCC 379 has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:- (i) The nature and gravity of the accusation; (ii) The antecedents of the applicant including the fact as to whether he 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; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. *There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.*

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21. *In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”*

The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

Keeping in view the facts and circumstances of the case, the judgment referred to hereinabove, antecedents and the modus operandi of the petitioner, his custodial interrogation stated to be required as per the status report filed by the State, this Court is thus not inclined to grant the concession of anticipatory bail to the petitioner. Therefore the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

January 19, 2023
S.Sharma(syr)

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