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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-54851-2023 (O & M)
Date of decision:04.12.2023

Narender

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pradeep Chhoker, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

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.186 dated 17.07.2023 under Sections 420, 468, 471, 379, 120-B IPC and Section 7-10-55 of the Essential Commodities Act, 1955 registered at Police Station Manesar, District Gurugram.

2. The facts leading to the registration of the FIR aforementioned are that the law was set in motion on the basis of an information dated 17.07.2023, forwarded by the complainant, to PS: Manesar, Gurugram, informing therein that some unknown person was illegally selling petrol. On the basis of this information, the police team reached the disclosed place and inspected the premises thereof where a Tanker Lorry bearing Registration No.HR55-AB-8983 was found parked and its chamber of 5000 liters was found to be opened and upon measuring, 300 liters of petrol was found deficient in the same. Upon investigation of the invoice issued by IOCL,

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Gurugram, the vehicle was supposedly filled with 20,000 liters of petrol. Upon further investigation 27 barrels of 220 liters each and 2 barrels of 1000 liters each were recovered from the premises. Thus, total 7940 liters of petrol was found in the barrels. The samples were drawn and sent to Laboratory for examination. The present FIR was accordingly registered.

During the course of investigation, accused-Sushil was joined in investigation and was arrested. He suffered a disclosure statement and on the basis of the inputs so received, notices were issued to Shamsheer and Rajesh Kumar under Section 41 Cr.P.C. The verifications further revealed that the vehicle found present at the spot was carrying a changed number plate bearing No.HR-47-D-6974 whereas its correct registration Number was found to be HR-47-D-4056.

On 10.08.2023, Shamsheer Singh was joined in investigation and on interrogation, disclosed that Mahesh Sharma was also involved in the crime and he used to aid the purchase of the chemical/thinner alongwith his partner-Mahavir.

The premises of said Mahesh Sharma were raided and it transpired that the petitioner-Narender was the cousin of said Mahesh Sharma. Upon this, the petitioner's premises were raided but he was not found present at the spot.

Upon completion of the investigation, the report under Section 173(2) Cr.P.C. was presented against all the arrested accused, namely, Sushil Kumar, Shamsheer, Mahesh Sharma and Mahavir.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. He had not been named in the FIR. He had no concern with the premises from which the

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alleged recovery was effected. In fact, he had been implicated as the officials from the Food and Supplies Department wanted a bribe from him. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, has filed a reply dated 02.12.2023. The same is taken on record. While referring to the said reply, he contends that as per the investigation, the petitioner had been instrumental in providing tankers which had been used in the commission of crime. He also used to manage the drivers for the same. The petitioner was a part of an organized gang which used to commit theft of the diesel/petrol from the tankers and with a view to re-fill the stolen petroleum product, used to mix it with chemicals which were provided by Mahesh Sharma. The vehicles provided by the petitioner were being plied, carrying false registration plates. As the offence against the petitioner was *prima facie* established and his custodial interrogation was necessary to ascertain the whereabouts of other drivers and *modus operandi* adopted by him in procurement of the vehicles used in the commission of crime, he was not entitled to the concession of anticipatory bail.

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 Livelaw (SC) 870***' has 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***

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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. A perusal of the investigation conducted so far would show that it was the petitioner who was providing tankers used for the commission of the offence. The vehicles provided by the petitioner were being plied, carrying false registration plates. The drivers for the said vehicles were being provided and managed by the petitioner. Therefore, quite apparently, the offence stands *prima facie* established against the petitioner. Even otherwise, the custodial interrogation of the petitioner is necessary to take the investigation to its logical conclusion.

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

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

December 04, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No