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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55531-2023

Date of Decision: 06.11.2023

SHUKKAI @ ASHIF

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CRM-M-55553-2023

RAHUL

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kartar Singh, Advocate
for the petitioner(s).

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-55531-2023 titled as Shukkai @ Ashif Vs. State of Haryana and CRM-M-55553-2023 as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRM-M-55531-2023.

2. The prayer in the present petitions under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.79 dated 21.04.2022 registered under Sections 147, 149, 323, 341, 406,

427, 506 IPC (Section 302 IPC added later on) at Police Station Bahin, District Palwal.

3. The instant FIR came to be registered on the statement of Alijaan son of Imrat who stated that in 2020, he had purchased a motorcycle bearing Registration No.HR52C1827. The said motorcycle had been taken away by Nissar son of Bashir on the pretext of some need. He (complainant) had gone to take the motorcycle back a number of times to the house of Nissar who was making excuses to not return the same. On 14.04.2022, at about 12.00, Nissar had come to their (complainant party's) village on the same motorcycle to see Hurmat son of Niwaz Khan. On coming to know about this fact, they (complainant party) had asked Nissar to return the motorcycle but he had started abusing them. After two hours, he along with 12-13 men came and attacked their (complainant's) home. Amongst the accused were Nissar son of Bashir, Nayab son of Bashir and Nasir son of Rehman all of whom attacked his father Imrat (deceased) with an iron rod and Saria badly injuring him. Rahul (petitioner in CRM-M-55553-2023) son of Nassir, Kalwa son of Nassir and Shukkai @ Ashif (petitioner in CRM-M-55531-2023) son of Nassir attacked his brother Jahul with a Saria and Farsa injuring him badly. Then Wahid (bail dismissed vide order dated 09.10.2023 passed in CRM-M-51089-2023) son of Hurmat and Hurmat son of Niwaz Khan along with Noorudin son of Hurmat entered their (complainant's) house and assaulted him with Latties, Farsas and rods badly injuring him. Then Subina wife of Khalid, Sabila wife of

Noorudin, Chunnar wife of Nasir and Khaid son of Hurmat along with Nasru son of Hurmat and Kale son of Nasru threw stones and brickbats at their house. Because of this, his (complainant's) brother Sahid got injured and the goods of the house along with a Splendor motorcycle bearing No.HR52C6873 were broken. Thereafter, all the injured were taken to the Civil Hospital, Hathin where seeing the critical nature of injuries on the person of the injured, they were all referred to Nalhar Hospital, Nuh where they were undergoing treatment. Legal action was sought.

Initially, the FIR had not been registered under Section 302 IPC but upon the death of Imrat, Section 302 IPC was added.

Nasir father of the petitioner was arrested and disclosed that his sons Rahul and Shukkai @ Ashif were present at the time of the occurrence.

The statement of the injured Jahul brother of the complainant-Alijaan son of Imrat (deceased) was recorded wherein, he specifically named the petitioners as having assaulted him.

4. The learned counsel for the petitioners contends that they have been falsely implicated in the present case. No injury had been caused by the petitioners on the person of the deceased. 15 persons including women had been named as accused but during investigation, Noordin, Khalid, Hurmat, Nasir and Kale had been found to be innocent and had not been challaned. The occurrence was of 14.04.2022 but was reported to the police on 17.04.2022. As the prosecution case was

doubtful, the petitioners were entitled to the concession of anticipatory bail.

5. On the other hand, the learned State counsel contends that specific injuries have been attributed to the petitioners on the person of Jahul brother of the complainant. Jahul's statement under Section 161 Cr.P.C. clearly inculpated the petitioners. They were members of the unlawful assembly which had caused injuries on the person of Alijan his father Imrat who succumbed to his injuries, Jahul etc. The bail application of Wahid stood dismissed and that of Nasir was withdrawn. As the petitioners were the members of an unlawful assembly and because of the injuries inflicted by the said unlawful assembly on the person of Imrat, he had died, they were not entitled to the concession of anticipatory bail as the offence was extremely grave in nature and even otherwise, the petitioners had been evading arrest for the last more than 1 year which showed that they had no regard for the law.

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

7. 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:-

“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 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.

8. In the instant case, there are specific allegations that have been levelled against the petitioners of having caused injuries on the person of Jahul. The statement of Jahul has been recorded under Section 161 Cr.P.C. wherein, he has reiterated the version of the FIR. The unlawful assembly had caused the death of Imrat, the father of the complainant-Alijaan and injured Jahul. At this stage, the petitioners cannot claim segregation of their roles to contend that no injuries had been attributed to them on the person of the deceased and therefore, they were entitled to the grant of pre-arrest bail. The offence committed by the unlawful assembly being one of murder is certainly grave and *prima facie* stands established. Necessary recoveries of the weapons in question have to be effected from the petitioners and the investigation has to be taken to its logical conclusion for which the custodial interrogation of the petitioners is certainly necessary.

9. In view of the aforementioned discussion, I find no merit in the present petitions. Therefore, the same stands dismissed.

10. However, it is made clear that the observations in this order are only for the purposes of deciding those bail application and the Trial

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Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observation made.

(JASJIT SINGH BEDI)
JUDGE

06.11.2023
JITESH

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