

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(101)

CRM-M-58160-2022(O&M)

Date of Decision: 10.01.2023

Vijay Malik

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Robin Singh Hooda, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

CRM-431-2023

Application is allowed as prayed for.

Annexures P-2 to P-4 are taken on record.

Main Case

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.618 dated 31.10.2022 under sections 302, 201, 34 I.P.C (sections 407, 411 IPC were added later on), registered at Police Station, Israna, District Panipat.

As per factual matrix, the FIR in question was registered on the statement of Gurbachan, wherein it was alleged that they were two brothers and younger to him was Nirranjan aged about 37 years. Nirranjan was having a truck upon which Jasbir was kept as a driver. On 4.10.2022 his brother had gone with the truck but did not return. There was a dispute regarding money transactions between his brother and Chakku, Bhinda and Pandit, who had threatened his brother that in case he did not clear the money transactions he would face the consequences. It was suspected that these

persons had murdered his brother and caused disappearance of his dead body. A request was made to take legal action against the culprits.

Apprehending the arrest, petitioner approached the court of learned Addl. Sessions Judge, Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 7.12.2022. Aggrieved by the same petitioner has approached this court for grant of pre-arrest bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. It is submitted that the petitioner is not even named in the FIR. He was named in the FIR on the basis of the disclosure statement of the co-accused. It is further submitted that there is an unexplained delay of 27 days in lodging the FIR. Counsel submits that the petitioner is a scrap dealer and the only allegation against him is that he purchased the truck which was owned by the deceased. He submits that before purchasing the truck petitioner had verified all the documents including the Aadhar Card and thus had no knowledge of the murder of Niranjana. It is submitted that petitioner has no criminal antecedents. Counsel submits that no case for custodial interrogation of the petitioner is made out and he is ready to join investigation.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the petitioner had purchased the truck in the garb of the business of scrap dealing. He submits that the deceased was the owner of the truck and he was murdered in the truck itself. He submits that the truck was manufactured in the year 2018 which was purchased at a throw away price and thereafter dismantled by the petitioner. He further submits that the

truck was dismantled by the petitioner in conspiracy with the co-accused only in order to destroy the evidence. It is submitted that the recovery of the truck in which deceased was murdered is yet to be effected and hence granting anticipatory bail to the petitioner would scuttle the ongoing investigation.

I have heard learned counsel for the parties at length and have gone through the records carefully.

As per case of the prosecution, the deceased was the owner of the truck and he left home with his truck on 4.10.2022. As he did not return a foul play was suspected and the FIR in question was lodged. Petitioner is alleged to have purchased the truck being a scrap dealer. From the documents placed on record it is clear that the truck was manufactured in the year 2018 but the same had been dismantled and is not yet recovered. The specific case of the prosecution is that the deceased was murdered in the truck itself which is a crucial piece of evidence and the recovery of the same is essential for the furtherance of the investigation.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often

interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs.**

State of Punjab, AIR 1980 SC 1632 has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while

*deciding an application for anticipatory bail. The relevance of these considerations was pointed out in **State v. Captain Jagjit Singh (1962) 3 SCR 622**, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioners do not qualify for exercising

the extraordinary power by this Court in their favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

10.01.2023

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(RAJESH BHARDWAJ)

JUDGE

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No