

CRM-M-59139-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59139-2022 (O & M)

Date of decision:31.05.2023

Shamsher Singh

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kanwar Pahul Singh, Advocate,
for the petitioner.

Mr. Neeraj Poswal, 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.144 dated 26.07.2021 under Section 11 of the Prevention of Cruelty to Animals Act, 1960 and Section 13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Section 420, 467, 468 and 471 IPC registered at Police Station Ambala Sadar.

2. The brief facts of the case are that while the police party was on patrolling duty, some persons belonging to a Cow Protection Organisation apprised the police party that one truck bearing No.PB02CC0054 was coming from Rajpura side wherein the cows were loaded and were being taken to UP for slaughter. If a barricading was done on GT Road, the said truck could be apprehended with the cows.

Pursuant to this information, the police officials set-up a

barricade and started checking the trucks coming from Punjab towards

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Delhi. A truck bearing No.PB02CC0054 was seen coming and was asked to stop. Then, all of a sudden, two persons after debording from the truck tried to flee away. They were apprehended and disclosed their names as Kulwinder Singh and Irfan. The truck was checked and was found to contain cows one upon the other totalling 14 in number.

Based on the said facts, the instant FIR came to be registered initially under Sections 11 of the Prevention of Cruelty to Animals Act, 1960 and Section 13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015.

3. During the course of investigation, the RC of the truck was examined, in which the name of the owner was recorded as Shamsheer Singh (petitioner) son of Puran Singh and the Chasis No. of the said truck was found to be recorded as MB1KADWC60PAH0881 and Engine No. as DAPZ106292 with the Registration No.as PB02-CC-0054.

The petitioner moved an application for release of the vehicle on superdari. However, verification of the RC of the above truck was to be done. On verification, it was found that the RC of truck No.PB02-CC-0054 had not been issued by the Office of the Registering Authority, Amritsar, Punjab. It was *prima facie* established that the recovered RC was a forged document and on the same day Sections 420, 467, 468 and 471 IPC were added to the aforesaid FIR.

Thereafter, an application was moved to the Office of the Registering Authority, Amritsar to provide the details of registration number of the truck on the basis of Chasis No.MB1KADWC60PAH0881 and Engine No.DAPZ106292. After examining the record, the office supplied the

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details that the registration number of the said vehicle was PB02CC9677 and the owner of the truck was Harjinder Singh son of Avtar Singh.

Thereafter, Harjinder Singh was joined in investigation and disclosed that he had sold the truck bearing No.PB02CC9677 to Puran Singh, father of the present petitioner, for an amount of Rs.10,05,000/- and an agreement to sell was reduced in writing on 20.02.2020. However, the truck was not transferred in the name of Puran Singh who had stated that he would get transferred the said vehicle in the name of his son-Shamsher Singh (petitioner). Thereafter, on 11.06.2020, a Power of Attorney was executed by Harjinder Singh in the name of Shamsher Singh (petitioner) but even thereafter, the truck was not transferred in his name. Apparently, the truck No.PB02CC9677 was being used by Shamsher Singh (petitioner) who had forged the documents of the truck and affixed a fake number plate showing the registration number as PB02-CC-0054. He had done the same on account of the fact that the vehicle was mortgaged with a finance company and as the petitioner did not repay the loan amount to the finance company, to save the truck from re-possession, the forged documents were prepared and a fictitious number plate was affixed on the said truck.

It also transpired that no permit had been issued for truck bearing registration No.PB02-CC-0054 making it apparent that the recovered documents i.e. the RC of the truck and the permit issued for truck No.PB02-CC-0054 were forged documents.

4. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. He was not arrested at the spot. Once the truck had already been sold to him, there was no reason for him to forge

the documents for the said truck. Even otherwise, as the truck stood

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recovered, no case for custodial interrogation was made out and the petitioner was entitled to the grant of anticipatory bail.

5. The learned counsel for the State, on the other hand, contends that the investigation clearly revealed that the petitioner had purchased the truck which was being used by the petitioner after affixing a fictitious number on the same and forging the RC and permit. The fictitious number plate had been affixed so as to avoid liability towards the finance company from which the loan had been availed and the repayment of which the petitioner had not made. He, therefore, contends that as the offence was *prima facie* established and the investigation was to be taken to its logical conclusion, the custodial interrogation of the petitioner was certainly necessary. Therefore, he was not entitled to the grant of anticipatory bail.

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(4) RCR (Criminal) 977***', 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

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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.***

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8. In the instant case, the investigation has *prima facie* established the culpability of the petitioner. Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly required. Therefore, the petitioner is not entitled to the grant of anticipatory bail.

9. In view of the above, I find no merit in the present petition and the same is hereby dismissed.

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

(JASJIT SINGH BEDI)
JUDGE

May 31, 2023
sukhpreet

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