

**102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRM-M-60768-2022 (O&M)
Aazad @ KoliPetitioner
Versus
State of Haryana Respondent

2. CRM-M-61026-2022 (O&M)
Mubarik @ TannaPetitioner
Versus
State of HaryanaRespondent

Date of decision : 11.01.2023

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Rosi, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J.

This order shall dispose of two abovesaid anticipatory bail petitions filed by the petitioners arising out of the same FIR bearing No.0230 dated 25.05.2022, under Sections 13(1) and 13(3) of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Section 429 of IPC, registered at Police Station Sadar Tauru, District Nuh.

As per the facts of the case, police received a secret information that Azad @ Koli son of Ali Mohammad, Mubarik @ Tanna, Mahmud @ Munda son of Ramzan all resident of Village Pachgawa and Kala resident of Chilawali Police Station Sadar Tawdu are indulged in the business of cow slaughtering and they were slaughtering the cows in the fields which is the backyard of house of Mubarik @ Tanna at Village

Pachgawa. It was informed that if the raid is immediately conducted then the accused could be apprehended on spot. On the basis of secret information received, the raiding party was constituted and some informer were also joined and the raid was conducted. It was seen that four persons with knives in their hands were slaughtering cows in the field as informed by the secret informer. On seeing the raiding party, three persons started running on bike, one person started running on foot and the secret informer identified them as Azad @ Koli, Mubarik @ Tanna, resident of Village Pachgawa and Kala resident of Chilawali Police Station Sadar Tawdu. The person running on foot was apprehended by the raiding party. He disclosed his name as Mahmud @ Munda. The raiding party recovered a fresh cut ear of a cow stained with blood, small cut horns of a cow and a piece of rope soaked in blood from the spot. The case was registered as in accordance with law. Petitioners apprehending their arrest, approached the Court of learned Sessions Judge, Nuh praying for grant of anticipatory bail. However, after hearing counsel for both the sides, anticipatory bail filed by Mubarik @ Tanna was declined vide order dated 09.09.2022 and that of Aazad @ Koli vide order dated 28.09.2022 by learned Sessions Judge, Nuh. Aggrieved by the same, the petitioners have approached this Court by way of filing the present petitions praying for grant of anticipatory bail.

It has been vehemently contended by counsel for the petitioners that the petitioners are not named in the FIR. He has also given the details of the other cases which the petitioners are facing. However, she submits that in some of the cases, the petitioners are acquitted and rest of the cases, they are on bail. She submits that *dehors*

the pendency of other cases against the petitioners, they deserve to be granted anticipatory bail in the present cases as their identification is also not established.

Learned State counsel has opposed the prayer made by learned counsel for the petitioners. He has stated that the petitioners were apprehended while they were indulging in the illegal activity of slaughtering the cows and the incriminating material was recovered by the raiding party from the place of occurrence. He has further submitted that both the petitioners are involved in other criminal cases. Petitioner-Aazad @ Koli is having seven other cases whereas, petitioner-Mubarik @ Tanna is involved in eight other cases and in one case, both the petitioners were declared proclaimed offender.

I have heard counsel for the petitioners and perused the record.

Evidently, the raid was conducted by the police on the receipt of a secret information. A secret informer was also member of the raiding party. When the accused started running on seeing the police party, they were duly identified by the secret informer. Out of four accused, one was even arrested on the spot by the raiding party. The incriminating material was also recovered by the raiding party from the place of occurrence. Petitioners approached the Court of learned Sessions Judge, Nuh praying for grant of anticipatory bail and it has been duly observed that both the petitioners are involved in other cases. As per details given, petitioner-Aazad @ Koli is involved in seven other cases whereas, petitioner-Mubarik @ Tanna is involved in eight other cases. Not only this, both the petitioners have been declared proclaimed offenders also in one of those

cases. The petitioners were specifically named in the FIR.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on 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.”

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

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.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, 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 a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

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 a discretion which can be exercised in the extraordinary circumstances.

Weighing the facts and of 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 petitions being devoid of any merit are hereby dismissed.

Photocopy of this order be placed on the file of connected case.

11.01.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No