

CRM-M-968-2024 (O & M)
(212)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-968-2024 (O & M)
Date of decision:29.01.2024

Jagdeep Singh Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Bishan Dass Rana, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

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.11 dated 23.01.2023 under Sections 379 and 411 IPC registered at Police Station Mahilpur, Distt. Hoshiarpur.

2. The present FIR came to be registered at the instance of the Forest Range Officer, Garhshankar and reads as under:-

“Complaint No. 18-Dasti, dated 23.01.2023 No. 499-G dated 23.01.2023 from Forest Range Officer, Garhshankar to, Station House Officer, Mahilpur. Subject:- regarding to register an FIR against the thief of woods. Sir, on the subject cited above it is submitted that on 23.01.2023 Sh. Davinder Singh Forest Incharge J.J. Block and Sh. Yashwinder Singh Forest Guard Incharge J.J. Beat made a report to the undersigned that an information has been supplied by Sh. Harvinder Singh son of Gurnam Singh village Gujjarpur and Sh. Davinder Singh son of Sh. Bakshi Ram resident of village Nariala that yesterday on 22.01.2023 in the night about 11 p.m. from Garhshankar to

CRM-M-968-2024 (O & M)
(212)

::2::

Hoshiarpur 64-65 Km. towards right side i.e. village Nariala 6 persons were cutting Safeda and Darik trees and loading the same in tractor trolley and when they tried to stop them then they ran away after leaving tractor trolley. Thereafter, the persons who had supplied the information handed over the tractor trolley, the number of which is PB10-AC 9484, to the Police at Police Station Shaila, in which there was small part of Safeda was loaded and the remaining material has left at the spot. Due to darkness the thieves of wood would not be identified. Thereafter, after the inspection of the spot by the Forest Guard and by the Forester two trees were found to be cut, which are entered in Govt. record the detail of which is as under:-1. Tree no. 63 kind Safeda round 155 class 11B; sr. No. 2 Tree No. 64 Kind Darik round 117 Class 3 found cut at the spot were taken in their possession. The list of number of cut pieces will be handed over to you. In this regard you are requested that after finding the whereabouts of the accused, legal action be taken against them regarding the theft of wood and FIR be registered. Sd/- Amarjit Singh, Forest Range Officer, Garhshankar”.

3. During investigation, one Avtar Singh file an application bearing No.131-SS), dated 27.01.2023 to the SSP, Hoshiarpur for an enquiry into the above FIR by stating that the petitioner is a Special Power of Attorney of the tractor trolley in question. On verification, it was found that the number affixed on the tractor trolley belonged to a three-wheeler and not to the recovered tractor trolley. Therefore, the offence under Section 482 IPC was added in the present case and the petitioner was nominated as an accused being a Special Power of Attorney of the tractor trolley vide DDR No.26 dated 17.07.2023.

CRM-M-968-2024 (O & M)
(212)

::3::

4. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. No offence as alleged was made out. As the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. The learned counsel for the State has filed a reply dated 29.01.2024 which is taken on record. While referring to the said reply, he contends that as per investigation conducted so far, the petitioner was the Special Power of Attorney of the recovered tractor trolley and was using the same by affixing a fake number of a three-wheeler. The tractor trolley in question was used for loading the wood-logs of Government trees after cutting and removing from the right side of the Garhshankar to Hoshiarpur road. As the offence was *prima facie* established from the investigation conducted so far and the custodial interrogation of the petitioner was required to take the investigation to its logical conclusion, the present petition was liable to be dismissed.

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***', 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

CRM-M-968-2024 (O & M)
(212)

::4::

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***

CRM-M-968-2024 (O & M)
(212)

::5::

custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

8. As per the investigation conducted so far, the tractor trolley of which the petitioner is a Special Power of Attorney was being used to transport the felled Government trees. Not only that, the number affixed on the tractor trolley belonged to a three-wheeler. Therefore, the offence as alleged is *prima facie* made out. Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation is necessary.

9. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

10. 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

January 29, 2024
sukhpreet

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