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(203)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3714-2024

Date of decision :05.04.2024

KRISHAN KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kawalpreet Singh Virk, Advocate
for the petitioner.

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

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.318 dated 14.07.2022 registered under Section 406 IPC (Sections 411/414/473 IPC added subsequently) at Police Station Tarori, District Karnal.

2. The present FIR came to be registered at the instance of Kavinsi wife of Vikramjeet and the same reads as under:-

"The contents of complaint are as follows." To the SHO PS Tarori District Karnal. Sir It is prayed that 1, Kavinsi w/o Sh. Vikramjeet (Caste Khatri Sikh) is resident of DOLCE Agro (O.P.C.) PVT. LTD. near Nar Singh Das Public School, Tarori, Karnal. I am the owner of the company at this time. On dated 04/07/2022 at about 2 PM, I had sent a Truck bearing registration no. HR 39D-7470 from Tarori to Kandla Gujrat through TRANSPORT MAHARISHI MARKANDAY ROAD LINES (Mobile No. 9034062423)

and thereafter it had to go from Kandla to Kochin through Ship. In which 285.00 quintal product was loaded which had value of about 26 lakh rupees. Mobile No. of Driver 8287250165 of which no information was received and neither his call was connected. Phone no. of the owner of the vehicle 9310162436 (he has told his name to be Sandeep Singh to the transporter). There is no clue about the owner of the vehicle. Transporter had booked the vehicle on the guarantee of Transporter Madan of Delhi (DELHI PUNJAB RAJASTHAN ROAD LINES MOB NO. 8882510872, 9911930872). The owner of the vehicle was given an advance of Rs. 36000/- on 4th July, the details of his account are as follows- NAME OF BANK- AXIS BANK, NAME OF ACCOUNT HOLDER- AJAY SINGH, A/C NO. 921020027458420, IFSC CODE- UTIB00004063, TRANSACTION ID- IMPS/ P2A/ 218519980544. From the last many days the mobiles of both owner and the driver are switched off. It is requested to you to pls track the mobile phones of the driver and the owner and locate them and recover the product as soon as possible. I shall be highly obliged. Thanking you. SD KAVINSHI W/O SH. VIKRAMJEET (950191772) DOLCE Agro (O.P.C.) PVT. LTD. near Nar Singh Das Public School, Tarori, Karnal.

3. During the course of investigation, the statement under Section 161 Cr.P.C. of Kavinsi (complainant) was recorded wherein she stated that she had come to know about the involvement of one Gaurav Gupta, resident of Delhi. Gaurav Gupta was apprehended and suffered his disclosure statement to the effect that he had purchased stolen rice at cheaper rates. He named one Avneesh (anticipatory bail dismissed by

this Court vide order dated 28.08.2023 passed in CRM-M-26864-2023) as the person who had sold him the same.

It transpired during the course of investigation that the driver of the truck in question was one Neeraj and the owner as per the FIR was Sandeep (subsequently known to be Krishan Kumar-petitioner). The house of Neeraj was raided by the Investigating Agency accompanied with the complainant. Neeraj was not found at his residence. However, on their way back, the complainant identified the truck in question parked outside a Dhaba. No.HP-97-3185 was affixed thereon. The owner of the Dhaba Ashok Kumar disclosed that the truck had been parked there by Neeraj who had gone for the marriage of his sister. The said truck was registered on the name of Krishan Kumar (petitioner) at Himachal Pradesh.

The statement under Section 161 Cr.P.C. of Ajay Singh son of Same Singh was recorded to the effect that Rs.36000/- had been received in his account on the instructions of Krishan Kumar (petitioner). The statement of one Bijender son of Chandi Ram was recorded to the effect that his truck bearing No.HR-39D-7470 which number had been affixed on the offending truck was in fact at a different location on 04.07.2022 and 05.07.2022. He also brought on record documents to show the same.

Thus, it transpired that Neeraj and Krishan Kumar-petitioner (masquerading as Sandeep) had got loaded the rice and had got deposited Rs.36000/- in the account of Ajay Singh. The fake and fictitious No.HR-39D-7470 had been affixed on the said truck though

the actual registration number of the truck HP-97-3185. Thus, the rice had been misappropriated.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, truck bearing No.HR-39D-7470 was in the ownership of Bijender son of Chandi Ram who was not related to the petitioner. Rs.36000/- had been transferred into the account of the petitioner and initially Ajay Singh in whose account the amount had been deposited was made an accused and only subsequently was converted to a witness. The petitioner had been implicated at the instance of one Jasbir Singh who had closed contacts with the Investigating Agency. As the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. On the other hand, the learned State counsel while referring to the reply dated 26.03.2024, contends that the offence stands established beyond reasonable doubt. During the investigation, it transpired that Neeraj and the present petitioner got loaded rice on the truck owned by the petitioner and misappropriated the same. A fictitious number was affixed on the said truck which actually belonged to another truck standing in the name of Bijender Singh. The offending truck had been duly identified by the complainant and the Dhaba owner had clearly stated that the said truck parked outside the Dhaba was at the instance of the driver-Neeraj, co-accused of the petitioner. Apparently, the petitioner was the owner of the offending vehicle. He, therefore, contends that as the offence *prima facie* was established and the investigation was to be taken to its logical conclusion, the custodial

interrogation of the petitioner was certainly required and he was not entitled to the concession 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 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. A perusal of the facts would clearly establish that the petitioner affixed a fictitious number on his truck and he along with Neeraj got loaded the rice which they misappropriated. The investigation conducted so far *prima facie* establishes the culpability of the petitioner and his co-accused. The investigation is to be taken to its logical conclusion and the recovery of the rice is also to be effected. Therefore, the custodial interrogation of the petitioner is certainly required.

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

10. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

05.04.2024
JITESH