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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision :- 22.03.2024

KAPTAN SINGH

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vazir Singh Mor, Advocate and
Mr. Vishal Garg Narwana, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana assisted by
DSP Satpal Yadav and ASI Sanjay Kumar.

Mr. Salil Sagar, Senior Advocate with
Mr. Sankalp Sagar, Advocate,
Mr. Sunil Kumar, Advocate and
Mr. Hardeep Singh, Advocate for the complainant.

ALOK JAIN, J.

1. The present petition has been filed *inter alia* praying for grant of anticipatory bail to the petitioner in case FIR No. 255 dated 16.04.2020 under Section 201, 302 & 325 of Indian Penal Code and Section 25 of the Arms Act, registered at Police Station City Hisar, as the petitioner has been summoned only under Section 193, 201, 218 & 466 IPC read with Section 120-B IPC vide order dated 29.01.2024 (Annexure P-13).

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2. Learned counsel for the petitioner after taking this Court through the summoning order has vehemently argued that the petitioner acted in a responsible manner and as soon as he came to know about the commission of offence by his PSO Vikram, he immediately informed his counterpart and brought the law enforcement machinery into action. He further submits that the summoning order itself is factually incorrect and it is a matter of evidence that he came to Hisar at around 12:00 P.M. He also submitted that the main accused Vikram not only called him after commission of the offence but also made 15 calls to various persons including the complainant, who is brother of the deceased. He further submits that learned Trial Court while summoning the petitioner has wrongly drawn the conclusion of the BEOS Test of Constable Kuldeep to entangle the petitioner in the present case. He further submitted that in the present case, order of re-investigation has been passed and subsequently he alongwith other persons joined the investigation and the petitioner relies upon the statement of DSP Ashok Kumar suffered on 25.01.2023 to substantiate that the telephone call made by him to DSP Ashok Kumar to demonstrate his responsible behaviour as he informed about the commission of crime immediately. He further relies upon the statement that when the main accused who had bolted himself in a room, the DSP Ashok Kumar informed the petitioner, and subsequently the main accused Vikram opened the door and was arrested. He further submits that Vikram was arrested by the authorities even before he could reach the place.

3. To summarize his arguments, it is submitted by the learned Senior Counsel, that the petitioner deserves the concession of anticipatory

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bail and in fact has made a positive statement after seeking instructions that the petitioner is ready to undergo a lie detector test to unveil the truth.

4. *Per contra* learned State Counsel has vehemently opposed the grant of concession of anticipatory bail to the petitioner and has argued that the petitioner has played a pivotal role in causing the disappearance of material evidence including the service pistol and to cover up the said material evidence he instructed his other PSO Kuldeep to get the weapon deposited back in the armory on a back date i.e. 15.04.2020, however, the said act was checked by ESI Satish, who was holding the register of armory and objected to the same and thereafter Constable Kuldeep correctly wrote 16.04.2020 by overwriting in the armory register. He relies upon the test undertaken by Kuldeep to substantiate his argument that the petitioner has played a pivotal role in the commission of the offence much less than the disappearance of the weapon used in the crime, thus the petitioner is not entitled to grant concession of anticipatory bail as the possibility of further complicating the investigation and tampering with the evidence and/or the witnesses cannot be ruled out.

5. Learned counsel for the complaint has vehemently argued that the petitioner was the mastermind for exterminating the material evidence. He further submits that the investigation in this case has been botched up at the initial stage at the instance of the petitioner. It was only after a re-inquiry was ordered, which was conducted by a Senior Police Officer, the role of the petitioner came to the fore. He submits that the petitioner being a public servant has fabricated the record and his conduct demonstrates that the petitioner can further compromise and even destroy

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the material evidence. Another issue raised by the complaint is that the alleged anomalies pointed out in the summoning order cannot be considered as there is no challenge to the summoning order and hence the petitioner cannot be permitted to raise such issues. He further relies upon the judgment passed by the Hon'ble Supreme Court of India in the case of *"Aditya Kumar Vs. State of Bihar and another"* 2023 SCC online SC 1593", to substantiate his arguments.

6. Heard learned Senior counsel for the parties and State counsel at length, and what emerges is that although the petitioner did not commit the offence of murder which was allegedly committed by his gunman Vikram, however, there are serious allegations of misuse and abuse of his official position. The act and conduct of the petitioner has procrastinated the entire process of investigation to the extent that a Senior Police Officer had to investigate the matter *de novo* and only then the matter proceeded and in this exercise, four years have gone by. There is specific statement by the other gunman namely Kuldeep, who tried to fabricate evidence with regard to the weapon used while trying to deposit the same in the armory and he tried to make an entry of 15.04.2020 instead of the actual date of entry which in fact was 16.04.2020. The reason for which manipulated entry was that gunman Kuldeep wanted to get the weapon reissued but could not do the same as ESI Satish did not allow him to do so. However, the gunman Kuldeep maintained that he had acted on the instructions of the present petitioner. There is enough material prima facie available on the file that the petitioner was instrumental in creating or rather destroying the evidence and/or tempering of evidence just because of the position he held.

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It is also pertinent to mention here that the offence was committed in the year 2020 and it was only after long drawn battle that the Court below summoned the present accused on 29.01.2024 by considering the entire factual matrix. It is pertinent to mention here that the order dated 29.01.2024 is not under challenge.

7. As regards the arguments of protection under Section 197 Cr.P.C., the same is also not available to the petitioner as the allegations *qua* the act and conduct of the petitioner does not fall within the parameters of Section 197 Cr.P.C. which grants protection to public servants only during the performance of official duties, as there are specific allegations against the petitioner of being instrumental in tampering of evidence at the scene of crime.

8. More so, the parameters for granting the extraordinary concession of anticipatory bail to a Police Official viz-a-viz a layman is far different. It is presumed that a police officer will act in a manner above board and for the said view, this Court finds support from the dicta of Hon'ble Supreme Court in the case of “***State of Jharkhand V/s Sandeep Kumar***” in ***SLP (Crl.) No. 10499 of 2023***, the relevant extract of which is reproduced as under:

9. *In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the*

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witnesses and the evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest.

10. No doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief of pre-arrest bail. However, the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office.

9. As regards the argument of the counsel for the petitioner that nothing has to be recovered from the petitioner and hence, he should be granted the concession of anticipatory bail, the same does not carry any weight as the allegations against the petitioner are that he has been instrumental in the tampering with the material evidence and his custody is absolutely required by the authorities to uncover the truth in the present case.

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10. In the case of “*C.B.I. Vs. Anil Sharma*” (1997) 7 SCC 187, the Hon’ble Supreme Court cancelled the anticipatory bail granted to the accused by the High Court by observing that custodial interrogation is qualitatively more elicitation orientated then questioning a subject who seeks anticipatory bail.

11. A perusal of the above judgment and coupled with the fact that it cannot be ruled out that:-

- (i) the petitioner would not influence the witnesses or,
- (ii) tamper with the evidence or,
- (iii) create obstruction in the proper administration of justice.

Thus, the custodial interrogation of the petitioner is imperative given the circumstances of the present case and for proper dispensation of justice and the fact that nothing is to be recovered from the petitioner becomes inconsequential in deciding the present petition.

12. In light of the above discussion, I do not find that the petitioner has been able to carve out a case for exercising the grant of the extra-ordinary concession of anticipatory bail. More so, the anticipatory bail of first investigating officer Ravinder also stands dismissed. Accordingly, the present petition is dismissed.

(ALOK JAIN)
JUDGE

22.03.2024
Parul

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes