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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13106-2024 (O & M)
Date of decision:09.04.2024

Hardeep Singh @ Gurman Petitioner
V/s

State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. N.S. Kamboj, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, 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 07.02.2024 under Sections 379-B, 341 and 34 IPC registered at Police Station Nihal Singh Wala, District Moga.

2. The present FIR came to be registered at the instance of Sarban Singh son of Ganga Singh and reads as under:-

“Statement of Sarban Singh son of Ganga Singh son of Sohan Singh resident of Kotli Malian, Tehsil and District Amritsar aged about 58 years Mob no. 99293-58191. Stated that I am resident of the above address I am having one son and 05 daughters. My son Jagraj Singh was died about one year ago and now I am working as a driver in Naurang Transport in Kot Ise Khan on canter number PB-05-AN-6755 since last 6 months. I am going alone in the canter from Bani Dairy, Kot Ise Khan to Modern Dairy, Karnal Haryana On dated 07.02.2014 as usual on having 18340 Ltrs milk in the canter has started from Kot Ise Khan to Karnal at 01.00 AM. When I reached ahead of Himmatpura towards Barnala side then from Moga

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Side one Mahindra Pick up has come across me then I run my canter with speed Then driver of the Mahendra Pick up has stopped the vehicle in front of my canter. He has asked me to open the window. In the meantime from the vehicle three person came out and after coming has tried to open both the windows and after open the window has hooked me and with the intention to snatching the vehicle I was removed from (driver) seat and keep on sitting the seat and after having the tanker aside has taken out the milk and Rs 700/- from my purse and also taken out some diesel from the tank. Then after closing me in the window and all of them has run away in the Mahendra Pick up vehicle. Then I, having fear, has started my canter and after some distance I have given call to my owner Ram Lubhaya and told the whole story and on asking of the owner, I have taken my canter to village Phagguwala centre Sangrur then after going to centre, I have scaled the milk taken out by them then it is found 1860 Ltrs milk and 100 Ltrs of diesel has snatched by the persons Mahendra pick up vehicle. Now I was coming to you along with my owner to record the statement. You met. Statement recorded, heard it is correct. Action may be taken against unknown persons Sd/- Rarban Singh the above verified by Sd/- Ram Lubhaya son of Kasori Ram resident of Kot Ise Khan. Dated 07.02.2024 Attested by Sd/- Jaswant Singh ASI PP Bilaspur P.S. Nihal Singh Wala dated 07.02.2024 XXX.... "

3. During the course of investigation, the statement of Ram Lubhaya, the owner of the canter bearing No.PB-05AN-6755 came to be recorded to the effect that as per their own enquiry, Hardeep Singh @ Gurman (petitioner) and Binder Singh @ Gora have committed the offence in question.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The registration

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number of the Mahindra pick up, the alleged vehicle used in the occurrence has not been mentioned in the FIR and therefore, the FIR appears to be a concocted one. It was strange that Rs.700/- and milk had been snatched but the mobile phone of the complainant had not been snatched. In fact, the petitioner had been busy in organizing a political rally on the day in question and therefore, could not possibly have committed the offence. As he was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

5. The learned counsel for the State, on the other hand, has filed a reply dated 09.04.2024 which is taken on record. While referring to the said reply, he contends that the name of the petitioner and his co-accused/Binder Singh @ Gora have come up during the course of investigation. Binder Singh @ Gora had been arrested and suffered his disclosure statement to the effect that he alongwith the petitioner and one Kalu on the intervening night of 06/07.02.2024 had committed the offence of snatching of milk, diesel and Rs.700/-. Therefore, it was the petitioner who was having the knowledge about the vehicle used in the crime and how he disposed off the snatched property. As he was the main accused, the offence was *prima facie* established and the investigation was to be taken to its logical conclusion, the petitioner 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(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*

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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. In the instant case, the name of the petitioner and his co-accused figured in the disclosure statement of Ram Lubhaya, the owner of the milk canter. It has been found during the course of the investigation based on technical inputs that the petitioner was present at the spot of the alleged occurrence. Further, the co-accused of the petitioner who was arrested has categorically disclosed in detail the role played by the petitioner in the commission of the offence. As the offence stands *prima facie* established and the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

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

April 09, 2024
sukhpreet

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