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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(105) CRM-M-17599-2024
Date of Decision:- 09.04.2024
VinodPetitioner
Versus
State of HaryanaRespondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Shubham Kaushik, advocate for the petitioner.
Mr. Tanuj Sharma, AAG, Haryana.

ALOK JAIN, J. (Oral)

1. The present petitioner has been filed under section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.255 dated 16.04.2020 under Section 302 of IPC, registered at Police Station City Hisar, District Hisar, Haryana, as the petitioner has been summoned only under Section 193. 201, 218, 466, 120-B of IPC vide order dated 29.01.2024 (Annexure P-2) on an application under Section 319 Cr.P.C.
2. Learned counsel for the petitioner after taking this Court through the summoning order has opened his arguments by submitting that the petitioner was posted at Police Station Anaj Mandi Hisar as Station House Officer and, in fact, one ASI Ravinder Kumar was the first Investigating Officer. The present petitioner reached at the place of occurrence only after the inquest proceedings were completed by ASI Ravinder Kumar. The petitioner accompanied the then DSP (Head

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Quarters) Ashok Kumar and they left the place of the alleged commission of crime immediately after verification and giving necessary instructions to the concerned officials. It is submitted that the trial Court while summoning the petitioner has relied upon the departmental inquiry initiated against the petitioner, however, submits that the allegations against the petitioner are baseless and vexatious. Regarding the injuries suffered by the deceased Rinku, an opinion was obtained from a Doctor from General Hospital, Hisar on 21.04.2020 regarding the wooden stick (mogra) found on the spot. The case property was deposited in FSL, Madhuban and MAMC Agroha, the statements of witnesses recorded and after completion of investigation, the challan was presented against the accused-Vikram.

3. Learned counsel for the petitioner has submitted that a Lie Detector test conducted on one of the co-accused also does not point any finger towards the petitioner. It is further submitted that the petitioner was the one who sought opinion qua the matter from the Medical Officer, General Hospital, Hisar, as to whether the injury could have been caused by the wooden stick or not. The counsel for the petitioner submitted that the Medical report so received only opined that the possibility of the wooden stick being an additional weapon of offence cannot be ruled out. The commitment of the petitioner to conduct a free, fair and transparent investigation was above board and he followed the procedure established by law.

4. Learned counsel for the petitioner further submits that learned Court below while considering the application under Section 319 of Cr.P.C. has returned the findings against the petitioner, which are also

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contrary to law and, hence, the petitioner deserves the concession of anticipatory bail.

5. *Per contra*, learned State counsel has vehemently opposed the grant of the extraordinary concession of anticipatory bail to the petitioner and submits that the evidence brought in before the trial court against the petitioner being substantial and sufficient fulfills the rigors of Section 319 Cr.P.C and and more so, there is no challenge to the said order/application so allowed. He submits that as per the summoning order (Annexure P-7), the accused was the Investigating Officer, who had been given the investigation after the same was allegedly botched up by the first Investigating Officer ASI Ravinder Kumar, who was none other than his subordinate official. Admittedly, the petitioner went with the DSP (Head Quarter) Ashok Kumar and was duty bound to conduct a fair investigation, however, when he became the Investigating officer, the petitioner did not make any attempt to find the empty cartridges at the scene of crime and the stand of the petitioner that he was unaware of the fire arm used in the commission of the offence is ludicrous.

6. It is a case where the incident took place four years ago, i.e. on 16.04.2020 and it has taken a long duration to bring out the truth, which was sought to be eclipsed up by the apparent loopholes and *mala fide* investigation carried out by the police officials. An official of the rank of SHO being not able to find out that whether the murder was committed by a wood-stick or a fire-arm raises serious doubts on the competency of the petitioner as a police official.

7. In the present case, different police officials have left no stone unturned in **spoiling** up the entire investigation which is not only

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hampering the trust of a common man in the police but is also delaying the trial. The petitioner apparently seems to be part of the conspiracy to derail the investigation and all these facets have been looked into by the trial Court before summoning him.

8. Learned counsel for the petitioner has argued that the petitioner had no role to play and did not conspire to compromise the evidence as is alleged to have been done by ASI Kuldeep Singh and DSP Kaptan Singh.

9. I have heard learned counsel for the parties at length and have perused the record. The petitioner being the second investigating officer in the case was also the SHO of a Police Station and apparently, he was unable to diligently perform his duties for which departmental proceedings have also been initiated against him.

10. More so, the parameters for granting the extraordinary concession of anticipatory bail to a Police Official viz-a-viz any other citizen are 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 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”.

11. 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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12. 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.

13. 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.

14. 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.

15. Accordingly, the present petition is dismissed.

April 9, 2024

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(ALOK JAIN)
JUDGE

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