



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29619-2024
DECIDED ON: 14.06.2024

DHARAMBIR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Pankaj Kaushik, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked for the second time in case FIR No.266 dated 22.05.2023 under sections 323, 325, 506, 307, 120-B, IPC & 25 of ARMS Act, 1959 registered at Police Station Kharkhoda, District Sonipat, Haryana.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“TO, 1. Report Facts): In the service of Chowki Incharge Farmana, the request is that am Subhash 5/0 Dalel caste jat, resident of village Farmana. We have two brothers and one sister. Younger Amarjeet has died. I do farming work. Yesterday on 21-5-23, I was coming from my farm to my home in the evening. When boys came behind them with 2 bags in their hands. One of them said to me that you are Subhash says, I said yes, then one of the boys fired at me with the pistol in his hand with the intention

of killing me, but I narrowly escaped. Then one of the boys grabbed me by the neck and threw me into the orangery below and among them Two boys attacked me several times on my arms and legs with the intention of killing me, which I killed. When I made the noise of 'kill me', many motorcycles going on the road stopped. Seeing them, the three boys threatened to kill me. They ran away sitting on a motorcycie and a boy ran towards the fields, who was helped by other people. Mohan S/O Mehar Ali resident of Farmana caught that boy with the weapon and then the police car came and handed him over. The boy gave his name as Devendra S/O. O Kuldeep Vishwas told that someone else, having a grudge against me, had made Devendra and his associates carry out a fatal attack on me. I could not see the number of the motorcycle. After investigation, legal action was taken against these four and others and my son Sagar and the villagers sent me to P.G. I came to Rohtak and got it filed, I presented my application to you, legal action should be taken applicant Subhash S/O plea i order 8816941885 22/5/23 SD Subhash Action: Yesterday on 21/5/23, police received a call from 112 in the post that a man has been shot at Gohana Farmana Road near Anand Bhatt. On this information, my mind reached the spot of SI May ASI Satish 40, HC Manoj 1933 where it came to the Majroob and the Majsya presented a written application against the Majroob after being found to have committed the crime of 307,506,34 IPC 25-54- 59 A.ACT, the Tahrir against Haja Baraye, the case was dismissed, HC Manoj 1933 Arsal police station. If there is a pending case number, inform through the form. Case special report should be sent to the service of Officer Bala. FSL team should be sent to the spot. Man SI Mashruf Ba investigation is about to be done. SHO sir

informed about the situation. Trauma Center PGI ROHTAK SD PURAN SINGH SI I/C PP Farmana DT 22/5/23 AT 2.30 PM Case No. 0-266 dated 22.05,2023 filed against Aj Police Station Hasb Amda Tahrir, Section 307,506, 34 IPC and 25-54-59 A. ACT Police Station Kharkhoda was registered and after preparing copies of FIR by computer, special report of M. Haja, Area Magistrate Saheb. Kharkhoda, or Police Commissioner Sonipat, Deputy Commissioner of Police West Sonipat or Light Officer ACP Saheb Kharkhoda, Bajaria email is being sent. The situation was informed to the SHO. FSL team was informed to reach the spot. The copy of the original police complaint was given to Arinda HC Manoj 1933 and sent to the designated researcher. The form was registered in the attendance of ASI Vedveer 1430.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not named in the FIR and no specific role is attributed to him but was subsequently roped in only on the basis of disclosure statement of co-accused Rohan,. He further contends that nothing has been recovered from the present petitioner, as such, his custodial interrogation is unwarranted. It has been asserted on behalf of the petitioner that he only use to visit his sister Kavita in the Sonipat jail in routine manner and did not go there to hatch any conspiracy against the complainant. It has been contended that co-accused, namely Jasbir Singh and Kavita have been granted the concession of anticipatory bail vide orders dated 06.11.2023 (Annexure P-7) and (Annexure P-6) respectively.

On behalf of the State

Learned State Counsel appearing on advance notice, opposes the prayer for grant of anticipatory bail at the very outset by urging that this being second anticipatory bail application is liable to be dismissed on account of non maintainability.

4. Analysis

Before considering the contentions raised in this petition, certain principles, which govern the grant of anticipatory bail, are required to be noticed. In ***Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1***, Hon'ble Supreme Court has enunciated the considerations that must govern the grant of anticipatory by holding as under: -

92.3...While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

Similarly, in ***Neeru Yadav Vs. State of UP & Anr., (2016) 15***

SCC 422, it was held by Hon'ble Supreme Court as under: -

“11. It is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge.”

Be that as it may, without going into the merits, a mere reference is sufficient enough to record that actually the case was heard at length during the course of hearing of first anticipatory bail petition(Annexure P-3) and there is no such change of factual aspects or any other new ground raised by the counsel for the petitioner today before this Court. Accordingly, the second or subsequent bail application under Section 438 Cr.P.C., can be filed, if there is a change in the fact-situation or in law, which requires the earlier view being interfered with or where the earlier finding has become obsolete and the same has been reiterated by the Apex Court in “ ***Rani Dudeja vs State Of Haryana 2017 (13) SCC 555***” wherein it has been held that once the first anticipatory bail stands withdrawn without going into the merits of the case, the second application for anticipatory bail is non maintainable until and unless there is change in the circumstances.

5. **Decision**

This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the ambit of Section 438 Cr.P.C., this petition fails. Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

14.06.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>