



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-M-42805-2024
DECIDED ON: 31.08.2024

PAWAN KUMAR ALIAS PAWAN JOGI

... PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sourabh Sheoran, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Punjab.

SANDEEP MOUDGIL, J

1. **Relief Sought**

The jurisdiction of this Court under Section 482 of BNSS, 2023, has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 383, dated 22.09.2021, under Section 148,149,302,201,120-B of IPC 1860, and section 25, of Arms Act 1959, registered at Police Station Sadar Kanina,, District Mahendragarh.

2. The prosecution's version of events is as follows: The complainant, his cousin Vikram, and Chetram were at Vikram's office in Village Dhanunda when they heard a commotion outside. Upon investigation, they saw Manjeet, Manoj, Pawan Jogi (petitioner), Vindra, Rohit, and 4-5 others armed with weapons. The group attacked Vikram, shooting him in the head and chest, and

beating him with sticks and fists until he fell unconscious. The assailants fled, and the complainant and others rushed Vikram to Aditya Hospital Rewari, where he was referred to Trauma Centre Rewari. Unfortunately, Vikram was declared dead on arrival.

3. **Submissions**

On behalf of the petitioner:

Learned counsel for the petitioner argues that after FIR was registered, a formal investigation was conducted by SHO Santosh Kumar and DSP Rajiv Kumar, who thoroughly investigated the case and found no evidence of the petitioner's involvement in the alleged crime. The petitioner's name was listed under Column 12, and no challan was presented against them, therefore his custodial interrogation is not required. However, when the complainant testified in court, they once again implicated the petitioner, reiterating the same version of events as the FIR. Subsequently, an application was filed under Section 319 Cr.P.C. to summon Rohit, Vijay @ Choti, and Pawan @ Jogi as additional accused.

On behalf of respondent-State

On the other hand, learned State Counsel submit that the petitioner has been specifically named in the FIR and is attributed with specific role of being armed with pistol and farsi in both the hands. Besides he along with other co accused has formed an unlawful assembly causing injuries to the deceased person. Hence prays for dismissal of the instant petition.

Heard learned counsel for the respective parties.

4. **Analysis and conclusion:**

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

Be that as it may, this court has decided that the accused is not eligible for pre-arrest bail due to the severity of the charges against him, including murder and assault, wherein he has been specifically named in the FIR attributing him with the role of firing gun shots at the deceased. However, this court also cannot ignore the fact that the petitioner was initially kept under column number 12 but later on when complainant moved an application under section 319 Cr.P.C, thereafter only he was summoned, meaning thereby some concrete evidence was available with the prosecution to which the trial court agreed and summoned the petitioner. Therefore to unearth various dimensions of the alleged incident, and taking into account the seriousness of these allegations and the severity of the potential sentences, this court is of the view that the accused is not entitled to pre-arrest bail.

Besides reference can be drawn upon on the apex court judgment rendered in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** wherein it has been 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.”

More so, It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”**; (1997) 7 SCC 187, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

31.08.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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