



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-M-43157-2024
DECIDED ON: 03.09.2024

JOBAN SINGH

... PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Abhilasha Kainth, Advocate
for Mr. B.S Bhalla, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (oral)**1. Relief Sought**

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 65, dated 19.07.2024, under Sections 109, 126(2) and 3(5) registered at Police Station Kathu Nangal, District Amritsar Rural. .

2. Submissions**On behalf of the petitioner:**

Learned counsel for the petitioner has submitted that the petitioner has not committed any offense and has been implicated falsely in the present case. It is further submitted that there is unexplained delay of 4



days in lodging the instant FIR, therefore the entire version of the prosecution is based upon falsehood and vague assertions.

On behalf of respondent-State

On the other hand, learned State Counsel that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is grave in nature as the petitioner has caused serious injuries with ice pick.

Heard learned counsel for the respective parties.

3. 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.

Taking into consideration the nature of injury inflicted by the petitioner on the person of the son of the complainant with ice prick on ear and waist and specific role attributed to him this court is not inclined to let the petitioner out on anticipatory bail at this stage, wherein recovery of the weapon is yet to be effected and reverting to the contention of lodging FIR after 4 days is concerned it cannot be fatal to the case of the prosecution as has been held by Apex court time and again in its various enunciation's one of such being ***“Tara Singh v. State of Punjab 1991 Supp (1) SCC 536”*** wherein it has been observed that It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station



immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.

The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** 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, investigation is still going on in the present case. 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 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.

03.09.2024

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**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No