

2024:PHHC:155837



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45951-2024
DECIDED ON: 16.09.2024

GURPINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. N.S. Gill, Advocate
for the petitioner(s).

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C., has been invoked seeking anticipatory bail to the present petitioner in FIR No. 134 dated 29.11.2023 under Sections 407, 120-B of IPC, 1860 (Section 411 IPC added later on) registered at P.S. City Samana, District Patiala.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

"At this time, it is recorded that application No.2133/5D/Police Station Samana dated 23.11.2023 submitted by Tarun Sodhi son of Sh. Bhupinder Sodhi resident of Village Sauwal, District Gurdaspur, M/s Mahadev Roadlines Siliguri West Bengal Mobile No. 85589-40635 against Gurbinder Singh son of Kulwant Singh resident of Rajgarh

alias Saundhewal, Karanvir Singh son of Sucha Singh resident of Jatta Patti Samana, Lucky son of Sucha Singh resident of Dera Patwarian Da Samana, Sukhwinder Singh son of Mahinder Singh resident of Dhainthal and Amarjit Singh son of Meer Chand resident of Garhi Mohalla Samana (Kabadiya Bhawanigarh Road Samana), under Sections 407, 120-B IPC, written by SI Baljit Singh 2475/Ptl. Police Station City Samana, for the purpose of registration of case handed over to me SI. The contents of the same are as follows, "To, The SHO, Police Station City Samana. Sub: Application against 1) Gurbinder Singh son of Kulwant Singh resident of Village Rajgarh alias Saundhewal Tehsil Samana District Patiala vehicle No. PB11BY8045 (Mobile No. 98650-00564, 79018-00546), 2) Karanvir Singh son of Sucha Singh resident of Jatta Patti Samana District Patiala (Mobile No. 62845-52208), 3) Lucky son of Sucha Singh resident of Dera Patwarian Da Samana (Mobile No. 79869-11632), 4) Sukhwinder Singh son of Mahinder Singh resident of Dhainthal Tehsil Samana, 5) Amarjit Singh son of Meer Chand resident of Garhi Mohalla Samana, (Kabadiya Bhawanigarh Road Samana), for committing cheating by selling the loaded scrap and usurping advance of vehicle's rent i.e. Rs. 19,56,026/- + 1,30,000/-, Sir, it is submitted that I Tarun Sodi son of Sh. Bhupinder Sodi, am resident of Village Sauwal, District Gurdaspur and I am running transport in the name of M/s Mahadev Road Lines at Siliguri West Bengal. On dated 30.10.2023, through my transport, the above Gurbinder Singh son of Kulwant Singh in his vehicle No. PB11BY8045 had come, by loading the scrap. The said scrap was filled from Firm Assam Enterprises Barpetta (Assam) and it was to go to firm of Siliguri namely Akansha Traders. The total weight of the scarp was 25 tonne. The total cost whereof comes out to be Rs. 7,96,500/- The same was dispatched through Bill No. 12 and in this regard, the above Gurbinder Singh had also received advance of Rs.60,000/- as rent of the vehicle. 2) The said vehicle was to reach Siliguri after four days. However, when after passing of four days, the vehicle did not reach to the party, then Party-Akansha Traders started making phone calls to me, whereupon

I contacted vehicle's owner Gurbinder Singh on his mobile number and then he stated to me that his vehicle has been caught by the finance persons and that he, after arranging the money, by getting released the vehicle from the finance persons, will get the goods handed over to the concerned party but he did not reach. 3) Similarly, the above stated Karanvir Singh and Lucky in their vehicle No. PB11BR7747, through my transport, from Assam Enterprises Barpetta, by loading 31 tonne 160 kilogram scrap, through bill No.13 dated 07.11.2023, had gone to Siliguri and the total cost of the said goods was Rs.10,29,526/- and advance rent was taken as Rs. 70,000/-. When the said vehicle also did not report to the party timely, then the party made a phone call to me and then I contacted on phone with Karanvir Singh and Lucky and they stated that their vehicle tyre has burst and that after getting the tyre replaced, they will make reach the goods to the concerned party. But the above stated persons did not make reach the goods to the above concerned party and thereafter they even switched off their mobiles. 4) That thereafter I made inquiry at my own level and upon reaching at Samana I came to know that the above two vehicle persons, after having conspiracy with Sukhwinder Singh son of Mahinder Singh resident of Dhainthal Tehsil Samana further sold the said goods to Amarjit Singh Kabadia son of Meer Chand resident of Mohalla Samana. In this manner, the above stated persons in connivance with each other have committed cheating of Rs.19,56,026/- with me. Therefore by submitting the application, it is prayed that for commission of offence of cheating by the above persons, FIR be registered against them and my scrap be got recovered from them to me or the cost of the scrap and the advance taken i.e. Rs. 19,56,026/- and money taken as advance i.e. Rs. 1,30,000/- be got recovered to me. I will be very thankful to you. With thanks. Yours faithfully, Sd/- Tarun Sodi son of Sh. Bhupinder Sodi M/s Mahadev Road Lines Siliguri West Bengal Mobile No. 85589-40635 Dated: 23.11.2023'

3. **Contentions**
On behalf of the petitioner

Learned counsel for the petitioner(s) submits that the petitioner(s) has been falsely implicated in the present and as per the case of the complainant, the goods had to reach to the concerned party within four days from 30.10.2023 i.e., 4th or 5th November. It is pertinent to mention here that the matter has been reported to the police only on 23.11.2023, but the FIR was got registered on 29.11.2023, therefore, there is delay of about 20 days for which no explanation is coming forth.

It is contended that the petitioner has not committed any offence. In fact, the finance company took possession of the vehicle, and it remains in their custody. This information was duly communicated to the complainant, which explains why the matter was not reported to the police at that time. However, the complainant later fabricated a false story, resulting in the lodging of a false FIR."

Notice of motion.

On behalf of the respondent/State

Mr. Jaspal Singh Guru, AAG Punjab, appearing on advance notice, accepts the same on behalf of respondent/State and submits that there is a specific allegation against the petitioner as he was owner of the said truck which was loaded with scrap. The total value of the scrap is worth Rs.19,56,000/- approximately. He further submits that the custodial interrogation of the petitioner is required to unearth the truth as to why the vehicle had not reached the destination even on 4th day.

4. **Analysis**

Be that as it may, after considering the submissions made herein above and on perusal of the assertions made in the petition as well, this court is of

the firm view that custodial interrogation of the petitioner is required as, *prima-facie* offence under Sections 407, 120-B and 411 of IPC is made out, against the petitioner. Such an allegation certainly requires adequate and intense investigation to unearth the truth. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

The law was set into motion after a complaint moved by the complainant that he hired trucks of Gurbinder Singh (petitioner) and others, to load the scrap from the State of Assam and the same was to be delivered Siliguri (West Bengal). When he came to know that the scrap had not been delivered at the destination, the complainant inquired at his own level and the name of the petitioner came to surface as to scrap having been sold at the shop of Amarjeet. Therefore, there are clear allegations against the petitioner and other as entrustment was made to them.

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 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(s) is certainly required. Therefore, I find no merit in the instant petitions, hence, the same are 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.

16.09.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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