

2024:PHHC:162139



104 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-50652-2024 (O&M)
DECIDED ON: 15.10.2024

PARVEEN

...PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rosi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

CRM-40694-2024

Application is allowed, as prayed for.

CRM-M-50652-2024

1. Relief Sought

The jurisdiction of this Court under Section 482 BNSS, 2023, has been invoked seeking anticipatory bail to the present petitioner in FIR No. 372, dated 15.06.2024, under Section 13(2), 17 of the Haryana Gauhansh and Gausamvardhan Act, 2015, Section 11 of Prevention of Cruelty Act, 1960 and Sections 120-B, 186, 279, 336, 353 and 429 of IPC, registered at Police Station Adarsh Nagar, District Faridabad.

2. Facts

The case was registered based on secret information from Gao Rakshak Dal, alleging that Mustak, Bittu @ Mustkim, and Parveen Kumar

(petitioner) were involved in cow slaughtering. On June 15, 2024, police officials set up barricades near Chandawali School based on this information. The accused were seen driving an Eicher Canter (HR69C1316) in a rash and negligent manner, and after a chase, they abandoned the vehicle and fled. Upon inspection, 17 cows were found in the Eicher Canter, with 15 alive and two dead. The accused were identified by members of Gao Rakshak Dal as Mustak, Bittu @ Mustkim, and Parveen Kumar.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the instructions of private person due to personal enmity. There is no evidence with the prosecution to connect him with the crime in question. Nothing is to be recovered from the petitioner, who is ready and willing to join the investigation.

Notice of motion.

On behalf of the respondent/State

Mr. B.S. Virk, Sr. DAG, Haryana, appearing on advance notice, accepts the same on behalf of respondent/State, who prays for dismissal of the present petition stating that the name of the petitioner has been specifically mentioned in the FIR. The petitioner and his co-accused are accused of committing a major offence of cruelty by keeping 17 cows in an Eicher Canter while tying them with ropes. As a result, two cows were dead. Custodial interrogation of the petitioner is required to ascertain the factual position of the present case.

4. **Analysis**

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.

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 ensconced 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 the instant case, the investigation has prima facie established the culpability of the petitioner as he was found driving the alleged canter carrying 17 cows to which during the course of the investigation, he could not establish that he was carrying or transporting the cows with a valid permit which is required for exporting the cows, as is the mandate under Section 7 of the Haryana Gauvansh

Sanrakshan and Gausamvardhan Act, 2015. Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly required. Therefore, the petitioner is not entitled to the grant of anticipatory bail.

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.

15.10.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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