

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

139

CRM-M-55463-2024
DECIDED ON: 07.11.2024

VIPIN KUMAR

.... PETITIONER

VERSUS

STATE OF HARYANA AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S.Cheema, Sr. Advocate with
Mr. H.S.Bains, Advocate
for the petitioner.

Mr. B.S.Virk, DAG, Haryana

Ms. Promila Nain, Advocate, Senior Panel Counsel with
Ms. Harveen Mehta, Advocate and
Ms. Isha Dhingra, Advocate
for respondent No.2-UOI Railways.

SANDEEP MOUDGIL, J

1. RELIEF SOUGHT

The jurisdiction of this Court under Section 438 Cr.P.C has been invoked seeking grant of anticipatory bail to the petitioner in case FIR No.1, dated 12.01.2023, under Section 3 and 4 of the Railway Property (Unlawful Possession) Act, 1966, registered at Police Station RPF, Rohtak.

2. The brief facts of the case are that initially an FIR No.18 dated 11.01.2023 was registered at Police Station Meham, Rohtak by Nirmal Kumar Ben working as Senior Section Engineer, Railway Line, Delhi in

Railway Department Sarai Rohilla (Construction) under Deputy Chief Engineer Tilak Bridge wherein it was stated that the material being used for construction of Railway Line has been stolen from the store established near the work site i.e. Bhaini Mahrajpur and during investigation carried by the Meham Police, three accused persons were arrested and the police recovered from their possession almost all the alleged stolen property stated in the FIR. Resultantly, since the matter pertained to theft of Railway property, FIR No.1 dated 12.01.2023 (Crime Case No. 1 dated 12.01.2023) came to be registered by the Railway Police and the case property was got transferred from the Meham Police Station to the Railway Police. .

3 SUBMISSIONS

ON BEHALF OF THE PETITIONER:

It is contended by the learned Senior counsel for the petitioner that the petitioner has been falsely roped in, the present case because initially the FIR was registered under Section 380 and 457 of the Indian Penal Code (for short – ‘IPC’) regarding the theft of railway property against unknown persons, however, subsequently, the FIR was transferred to respondent No.2 – Incharge, Railway Protection Force, Rohtak, vide Roznamcha dated 12.01.2023. As there was involvement of railway employees, contractors and their staff in the commission of crime of theft of material being used for laying of railway line from the railway store from village Meham to Hansi. There was no detail of material allegedly stolen, however, a total material valuing figure of more than Rs.3 crores has been given in FIR and it cannot be believed that the material worth more than 3 crores will be stolen in one single night. As the petitioner’s parental home

was visited by the Investigating Officer at village Gounda, Muajjaam Nagar, Uttar Pradesh, who informed the parents of the petitioner that they intend to arrest the petitioner for having issued fake GST bills, however, no statutory notice of appearance was served upon the petitioner. In view of the statement of Investigating Officer, the petitioner was apprehending his arrest under the CGST Act, 2017, therefore, petitioner filed W.P.Crl. No.469/2023 before the Hon'ble Supreme Court of India challenging the vires of the CGST Act, 2017 and vide order dated 06.10.2023, Annexure P-3, the Hon'ble Supreme Court directed that No Coercive steps be taken against the petitioner. But, the petitioner on coming to know that RPF is not pressing charges under the CGST Act, 2017, the said petition was withdrawn by the petitioner, vide order dated 02.05.2024, Annexure P-4.

It is further contended on behalf of the petitioner that without any notice under Section 41A of Cr.P.C., 1963, the petitioner by his own volition joined the investigation in the present FIR on three dates i.e. 14.11.2023, 25.11.2023 and 27.11.2023 and also cooperated in the investigation and thereafter, the petitioner was never called to join investigation but surprisingly, in the month of June, 2024, again, RPF contacted the parents of the petitioners and threatened to arrest the petitioner which compelled the petitioner to approach the Court of Session at Rohtak for grant of concession of anticipatory bail to the petitioner but the same was dismissed by the Session Court, vide order dated 06.07.2024, Annexure P-5. Therefore, the petitioner has filed the present petition with a prayer to grant him anticipatory bail in the present case.

It is also argued by the learned Senior counsel that the allegation against the petitioner is that he prepared fake GST bills by creating fake firms for which FIR No.241 dated 06.07.2023 under Section 420 IPC already stands registered at Police Station Kachhauna, District Hardoi, Uttar Pradesh. However, the petitioner has been implicated falsely in the present case also for the same act, whereas the petitioner has been arrayed as an accused on the basis of disclosure statement, Annexure P-9, of co-accused. Co-accused Abhinav has been granted anticipatory bail by this Hon'ble Court in CRM-M-32089-2023 vide order dated 13.12.2023, Annexure P-10. Moreover, as many as 28 other co-accused, as per list at Annexure P-11, have also been granted bail by the Court of Session/Court of Magistrate.

ON BEHALF OF RESPONDENT-STATE:

On the other hand, learned counsel for the State of Haryana has submitted that the allegations against the petitioner are serious in nature because he is found to have created fake firms and fake GST bills and is, thus, responsible to cause financial loss to the State exchequer. It is on the basis of those fake bills, the crime/theft was given original shape. It is further submitted that initially three accused namely Sandeep, Vijay Ram and Suresh were arrested and they got recovered Railway Property worth Rs.40 lacs. Then on 13.01.2023, under the directions of the Hon'ble Court property was handed over to the RPF Rohtak and on 18.06.2023, accused Ashish was arrested from Delhi, In total, twenty seven accused were arrested and a case under Section 3 & 4 of the Railways Property (Unlawful Possession) Act, 1966, was registered. The petitioner is alleged to have

constituted the firm alongwith Mudit Gupta and Ashish for the purpose of issuing the fake bills in order to sell the railway property. As such, the petitioner has actively participated in the crime and, thus, does not deserve any relief from this Hon'ble Court as his custodial interrogation will be required to unearth more scams.

ON BEHALF OF RESPONDENT NO.2

Learned counsel for the respondent No.2 has argued that the petitioner has prepared fake bills to facilitate the theft of railway property and has, thus, caused a financial loss of over 3.00 crores to the railway by theft of railway property. The project of Government of India was of Rs.900 crores and out of said figure, loss of 4 crores has been effected by various accused and the petitioner alongwith co-accused Mudit Gupta and Ashish created a fake firm in the name of Saurabh Ji Firm Limited and issued the bill for the purpose of selling the tracks of railway. Therefore, the present bail application may kindly be dismissed as the petitioner's custodial interrogation is must to recover more railway property.

4. Heard learned counsel for the parties at length.

5. **ANALYSIS AND CONCLUSION**

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 particularly in view of the fact that serious overt act has been attributed to the petitioner.

In CRM-M-44030-2023 filed by co-accused Deepak Batta, status report had depicted that 200 Kgs of stolen Railway properties were

taken into possession from Shree Ganesh Alloys, Mandi Gobindgarh, Punjab, which were lying in original form and transported to their premises on 19.12.2003 and 03.01.2023 in truck Noi. HR-46E-1961 and apart from this, 164 Ingots weight approx. 30 Tone made after melting the stolen property was also taken into possession on disclosure of Sanjeev Kumar. It has also been mentioned that 17 accused are still on the run and Railway properties worth Rs.3,33,18,8708/- is yet to be recovered. The status report also discloses the details of Railway properties recovered till date worth Rs.63,41,000/- out of which Railway properties worth Rs.23,15,000/- has been recovered from Shri Ganesh Alloys Mandi Gobindgarh, Punjab – the firm to whom the petitioner sold the stolen properties. Besides, the status report also discloses the list of seized vehicles used in transportation of stolen property, mobile phone, laptops, DVR, fake documents/bills, fake firms, fake bank cheque books etc.

Further, A perusal of the investigation conducted, clearly discloses the name of the petitioner as a participant in the entire conspiracy and crime committed against the Railway to facilitate the theft of railway property.

Moreover, 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. In State of ***Andhra Pradesh vs. Vimal Krishna Kundu***, AIR 1997 SC 3589, Apex Court has held that in case of well orchestrated conspiracy, if the accused is equipped with anticipatory bail order before interrogated by police, would greatly harm the investigation and would impede the prospects of unearthing all the

ramification involved in the conspiracy. Similarly, in ***Ram Govind Upadhyay versus Sudarshan Singh, (2002) 3 SCC 598***, it has been observed as under:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

6. **CONCLUSION:-**

In view of the seriousness of the allegations coupled with the order dated 02.05.2024, Annexure P-4, of Hon’ble Supreme Court, vide which the petitioner was permitted to withdraw his petition wherein the Hon’ble Supreme Court has vacated the interim order and also issued directions that “The proceedings against the petitioner(s) shall continue in accordance with law”, the present petition, is not maintainable at this juncture. The custodial interrogation of the petitioner may surface more

scams and fake firms/bills to unearth the entire conspiracy. Therefore, I find no merit in the petition and the same is hereby dismissed.

7. However, it is made clear that the observations made hereinabove shall have no bearing in the mind of the trial Court while adjudicating the trial.

07.11.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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