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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57964-2024
DECIDED ON: 21.11.2024

TILAK RAJ AND ORS.

....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yashpal Thakur, Advocate
for the petitioners.

Mr. J.S. Rattu, DAG, Punjab.

Mr. H.S. Deol, Advocate for the complainant.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita 2023 (B.N.S.S. 2023) for anticipatory bail in DDR No./G.D. No.41, dated 13.07.2024, Under Sections 126(2), 118(1), 115(2), 351(2), 296, 191(3), 190 (section 118 (2) added later on) of B.N.S. 2023, Police Station: Mandi Gobindgarh (Cross-Case) (Annexure P-2) in FIR No. 134 dated 13.07.2024, Under Sections 115(2), 126(2), 351(2), 191(3), 190 of B.N.S. 2023, Police Station: Mandi Gobindgarh, District Fatehgarh-Sahib, Punjab (Annexure P-1).

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

'At this time, a statement was received from unknown Seva Singh, son of Gurdev Singh, resident of village Ajnali, police station Gobindgarh, district Fatehgarh Sahib, aged 45 years, phone number 91157-50604, addressed to ASI Jagdeep Singh number 508/PHG, with PHG Harjinder Singh number 453. The statement's contents are as follows: "I, the resident of the aforementioned address, work as a laborer. My daughter Simran Kaur has married Vipin Kumar, son of Anil Chopra, resident of Ajnali, by her own free will through court marriage on 29.04.2024. We have no social interaction with Vipin Kumar and his family. The boy's family is always looking for excuses to quarrel with us. On 11.07.2024, around 09:00 PM, when I was returning home with my daughter Rajji after getting medicine from Dr. Pappu in Ajnali, we reached near Anil Chopra's house, where Tilak Raj, son of Jagat Ram, Mani Chopra, son of Anil Chopra, Hani Chopra, son of Tilak Chopra, and Anil Chopra, son of Jagat Ram Chopra, were standing in the street. Tilak Raj started abusing me, and the aforementioned individuals started fighting with me and my daughter Rajji, and they also started using casteist remarks against us. My daughter and I returned home, but the aforementioned individuals chased us. When we reached home, there was an argument with the other party. They started speaking ill of my daughters. Tilak Raj grabbed me by my arms, Anil Chopra hit my left arm with a stick, and Hani Chopra hit my chest with a stone. At the spot, my nephew Manpreet Singh, son of Colonel Singh, and Lovepreet Singh, son of Tara Singh arrived and tried to rescue me from the aforementioned individuals. The aforementioned individuals left me and started beating my nephew Manpreet Singh and dragged him inside. I raised an alarm, and my family members, my brother Colonel Singh. Jarnail Singh, my wife Manjeet Kaur, my daughters Sanjana, my niece Silky, my nephew Shetty, my nephew Sandeep, my sister-in-law Bhल्ली, and my niece-in-law Manpreet Kaur came to the spot and tried to rescue my nephew Manpreet Singh. The aforementioned individuals, along with some unknown outsiders, started throwing bricks and stones at us. If we hadn't rescued my

nephew Manpreet Singh, he could have been killed. Hani Chopra, son of Tilak Raj, hit my niece Silky on the face with a sharp object. People standing on the roof threw bricks, which hit all of us. At that time, my brother Avatar Singh arrived and rescued us. Avatar Singh, Lakhwinder Singh, son of Jeet Singh, and Sukhwinder Singh, son of Kartar Singh, residents of Ajnali, admitted us to the Civil Hospital Mandi Gobindgarh for treatment. The doctor provided initial aid and referred me, my nephew Manpreet Singh, my niece Silky, and my wife Manjeet Kaur to GMCH Sector 32 Chandigarh. The doctor at GMCH Sector 32 Chandigarh has now discharged me. Manpreet Singh, and Manjeet Kaur. During the fight, Ravi Chopra, Pradeep Chopra, sons of Jagat Ram, Pradeep Chopra's son, and Priya Chopra, residents of Ajnali, also beat us. Today, after being discharged from CIMCH Sector 32 Chandigarh, I, along with my nephew Manpreet Singh and wife Manjeet Kaur, was coming back and met you near the bus stand Sarhind. I have given you my statement in writing, which you have heard. Signed/- Seva Singh.'

3. **Contentions**

On behalf of the petitioners

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case as the present DDR is a counter-blast to an earlier FIR No.134, dated 13.07.2024 registered at the behest of son of the petitioner No.4-Anil Chopra and they have no concern with the alleged offence. He further contends that nothing is to be recovered from the present petitioners by the investigating agency, therefore, detention of the petitioners will not serve any fruitful purpose, more so, the petitioners are ready and willing to join the investigation. It has been contended on behalf of the petitioners that they are not habitual offenders as they are not involved in any other case of any nature.

Notice of motion.

On behalf of the respondent-State/complainant

Learned State Counsel appearing on advance notice, accepts the same on behalf of respondent/State assisted by learned counsel for the complainant, who prays for dismissal of the present petition stating that offence under Section 118(2) of BNS has been added as the present petitioners formed an unlawful assembly and inflicted injuries on the person of the complainant and his family members. Custodial interrogation of the petitioners are required to ascertain the factual position of the present case, therefore, prays for dismissal of the petition.

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 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.”

5. Conclusion

In the instant case, *prima facie* culpability of the petitioners is evident as the petitioners have inflicted injuries on the person of the complainant as well as to his family members and the weapons used by them in giving injuries, is yet to be recovered, even otherwise, the petitioners have formed an unlawful assembly and the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioners is certainly required. Therefore, the petitioners are not entitled to the grant of anticipatory bail, hence, the same is 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.

21.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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