

CRM-M-62575-2023

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(214)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-62575-2023

Date of decision :29.02.2024

ASHISH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.148 dated 11.04.2023 registered under Section 25 of Arms Act, 1959 at Police Station Barauda, District Sonipat.

2. The present FIR came to be registered at the instance of Joginder ASI and the same reads as under:-

“To DSP Gohana and DSP West, Sonipat. 396/M Cell, dt 30-03-23 subject Regarding display of weapons on social media. Sir, vide your office letter No. 97. P.C. P/G dated 21.01.2023, subject regarding display of weapons on social media, was received in Cyber Cell Sonipat, the analysis of which was carried out by ASI. All the photos shown in the letter were uploaded on the URL <https://www.facebook.com/dhola.madina> of Facebook ID and URL <https://www.instagram.com/dholamadina0001/> of Instagram ID, Facebook and Instagram ID was registered by obtaining OTP on number 9253264000,

the SIM of which was found to be issued in the name of Ashish s/o Sahab Singh VPO Madina, Tehsil Gohana, Distt Sonipat. During the investigation, the IP address information was obtained from Facebook and Instagram about the time when the above Facebook and Instagram accounts were used Photos with weapons were taken and uploaded on Facebook and Instagram accounts, which information is attached. It has been found that the rules of weapon licenses have been violated on the aforesaid Facebook and Instagram accounts. Ashish S/o Sahab Singh R/o VPO Madina, Tehsil Gohana, District Sonipat falls under the jurisdiction of Police Station Barauda. Therefore, it is recommended to register a case under the appropriate section of the Arms Act as per the rules against those using the above Facebook and Instagram accounts. Report is submitted for service. SD JOGINDER ASI.”

3. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. There was an unexplained delay of 12 days in the registration of the FIR which was fatal to the prosecution case. Since, he was a young boy of the age of 24 years and was ready to join investigation, he was entitled to the concession of anticipatory bail.

4. A status report dated 27.02.2024 by way of an affidavit of Sombir, HPS, Assistant Commissioner of Police, Gohana, Sonapat has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that though the petitioner joined investigation, he did not produce the weapons with which the photographs had been taken. Therefore, clearly,

he was not cooperating with the Investigating Officer. Further, he was a habitual offender with three other cases pending against him whereas in two cases he stood acquitted. Therefore, the allegations levelled against him coupled with the fact that he was not cooperating with the investigation as also his criminal antecedents did not entitle him to the concession of bail.

5. I have heard the learned counsel for the parties.

6. 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.

7. When this matter had come up for hearing on 20.02.2024, an assurance was given that the weapons which the petitioner was seen to be carrying on his social media account would be handed over to the Investigating Agency. However, the petitioner has not done so. Further, the petitioner is an accused in three cases arising out of FIR No.259

dated 10.10.2017 U/s 302, 34 IPC and Sections 25, 54, 59 Arms Act, P.S. Baroda, Sonapat, FIR No.347 dated 28.07.2021, U/s 148, 149, 323, 341, 506 IPC, P.S. City Gohana and FIR No.222 dated 09.08.2020 U/s 148, 149, 323, 506, 341 IPC, P.S. Baroda. In addition, he faced Trial and was acquitted in two cases emanating out of FIR No.465 dated 18.12.2021, U/s 285, 323, 427, 506, 120B, 34 IPC, P.S. Baroda and FIR No.317 dated 29.10.2015, U/s 294, 341, 506 IPC, P.S. Baroda. Further, the offence is *prima facie* established as is apparent from the investigation conducted so far and the weapons seen on the social media account of the petitioner need to be recovered. Therefore, the custodial interrogation of the petitioner is certainly required.

8. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

9. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

29.02.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No