

2024:PHHC:157610



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59351-2024
DECIDED ON: 28.11.2024

KAMAL KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Khatri , Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the 2nd time under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.134, dated 21.11.2023, under Sections 379, 381, 411 and 34 of IPC, 1860, registered at Police Station Division D, District Amritsar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

"From Incharge Auto Workshop Municipal Corporation Amritsar. To SHO Police Post Durgyana Mandir Amritsar. Subject Surprise checking by the team of Municipal Corporation Amritsar. Sir, Today on 21.11.2023 at around 12:30 PM, a team of Municipal Corporation Amritsar conducted a surprise checking at Municipal Corporation, Auto Workshop, Opposite Durgyana Mandir, while checking it was found that Kamal Kumar who is driver of JCB Machine No. PB02-CR-3384 had parked the JCB machine behind a wall and with the help of his

colleague he was taking out diesel through a pipe and who on seeing us ran away from the spot. However his other accomplice was over-powered by the team of Municipal Corporation and his name was asked who disclosed his name as Pankaj Kumar son of Hans Raj resident of Guru Ram Dass Nagar, outside Bhagtwala, Amritsar and disclosed that he had come to the workshop on the asking of Kamal Kumar and it was on his directions that he was stealing Diesel from the machine Kamal Kumar alongwith said person have stolen diesel from the Government JCB Machine and has committed a big mistake and in this regard a call was made to the Police for taking action On your reaching the spot custody of Pankaj is being handed over to you alongwith a cane containing 15 to 20 Litres diesel, one pipe on which a funnel has been made by cutting a bottle. The other accused Kamal Kumar has ran away from the spot. Kindly take legal action Sd/- Rama Rani 21.11.2023 Incharge, Auto workshop, Municipal Corporation, Amritsar. Police proceeding: Today I ASI alongwith ASI Rajpal 1924 Amritsar, ASI Jagdeep Singh 1519 Amritsar, Constable Arjan Sharma 2917 Amritsar in connection with patrolling and search of bad elements were present at main gate Durgyana Mandir that a phone call was received from the Head Munshi, Police Post Durgyana Mandir, that Dr. Rama Rani, Incharge, Auto Workshop, Municipal Corporation and his team has apprehended a person stealing oil from a Gout. JCB machine. You reach at workshop, Municipal Corporation, near Durgyana Mandir. On that I, ASI alongwith colleague officials reached at the Municipal Corporation workshop, near Durgyana Mandir, where Dr. Rama Rani, Incharge, Auto workshop, Municipal Corporation, Amritsar alongwith his team were found present, who presented one written complaint alongwith apprehended person Pankaj S/o Hans Raj R/o Guru Ram Dass Nagar, outside Bhagtwala, Amritsar alongwith one cane plastic containing the stolen oil, one pipe for taking out oil alongwith. Recovered cane plastic containing stolen oil (diesel around 15 litres) and pipe for taking out oil alongwith a funnel made by cutting a bottle being evidence was taken into police possession vide separate memo of recovery at the spot and Pankaj Kumar above was handed over to police party vide memo of handing over. According to the complaint it has been written about the driver of Govt. JCB machine PB-02-CR-3384 Kamal Kumar that he has ran away from the spot. According to the complaint, recovery and circumstances the offence is made out U/s. 379, 381, 411, 34 IPC. Therefore, the original complaint alongwith statement is forwarded through by hand Constable Arjan Sharma 2917 Amritsar for getting the FIR register at Police Station. After the registration of FIR, the FIR number be disclosed. Special reports be prepared and sent in the service of senior officials and Illaga Magistrate Sahib and control room be informed and SHO, Police Station has been informed that I, ASI alongwith colleague officials is busy in investigation at

the spot. At boundary main gate Durgyana Mandir, Amritsar AT 06:30 PM, Sd/ - Parveen Kumar ASI, Police Post Durgyana Mandir, District Amritsar Dated 21.11.2023. Today at Police Station:- at present on receiving the above complaint, after the registration of the above FIR under above sections, the original complaint alongwith copy FIR is being forwarded to ASI for further proceedings at the spot through by hand official came present. After preparing the special reports are being forwarded in the service of laga Magistrate and senior officials through by hand HC Balfinder Singh 896. Control room and SHO Police Station have been informed through telephone. Competition Rapat No. 38 Time 09:46 PM."

3. Contention

On behalf of the petitioner

Learned counsel for the petitioner submits that there is a change of circumstance from the earlier date, when he withdrew the petition before this Court vide order dated 23.01.2024 passed in CRM-M-3473-2024. Reference in that regard has been made to the report dated 20.05.2024 by the Superintendent(G) (Annexure P-4), which recorded that in the inquiry it has been revealed that the petitioner had gone to take medicine at the time, when the oil was stolen meaning thereby he was not present at the spot and as such cannot be made liable for the offence in question.

The petitioner has duly supported his assertion by prescription slip issued by the doctor and on the basis of that his reinstatement has been recommended, which already stands implemented vide order dated 13.09.2024 (Annexure P-5).

Notice of motion.

On behalf of the State

On the asking of Court, Mr. Jasjit Singh Rattu, DAG Punjab, accepts notice on behalf of respondent/State and submits that the 2nd anticipatory bail is not maintainable.

4. **Analysis**

Be that as it may, considering the submissions made by learned counsel for the petitioner that he was not present at the spot and the contention of learned State counsel with regard to the maintainability of the present petition would not carry any weight in the peculiar facts, wherein there is a change of circumstance, in the light of inquiry report dated 20.05.2024 (Annexure P-4) and the reinstatement of the petitioner vide order dated 13.09.2024 (Annexure P-5), this petition deserves to be allowed.

In the light of above, this Court finds no reason to deny the petitioner the concession of anticipatory bail wherein the petitioner has bona fide intentions and is ready and willing to join the investigation and cooperate in furtherance of the same so that the final report can be submitted by the Investigating Agency in time.

5. **Decision**

Hence, the petitioner is directed to be released on anticipatory bail subject to his joining investigation with the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to his satisfaction. The petitioner shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS, which are reproduced below:-

‘When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.'

However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within a period of one week, the order passed by this Court today shall automatically stands cancelled.

In the aforesaid terms, the present petition stands allowed.

28.11.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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