



104

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.61973 of 2024
Date of Decision: 11.12.2024

Rahul

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mohan Singh Chauhan, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of BNSS, 2023 praying for the grant of anticipatory bail to the petitioner in case bearing FIR No.426, dated 05.09.2023, under Sections 457/380 and Sections 201/411 of IPC added later on, registered at Police Station KUK, District Kurukshetra, Haryana (Annexure P-1/T).
2. As per the facts of the case, FIR in the present case was lodged on the statement of complainant, namely, Sunny, son of Puran Chand. It was alleged that he was the resident of Kurukshetra and had gone to Sonipat from 31.08.2023 to 05.09.2023, however when he returned back on 05.09.2023 at 03:30 P.M., he found that locks of all the rooms were broken and household articles were lying scattered. On verifying, he found that Rs.1,70,000/- cash and 5 tolas of gold were



missing. There was CCTV camera installed in the house, however the DVR was taken away by the thieves. The request was made to take the legal action. On the registration of FIR, the investigation commenced. During the investigation, complicity of the petitioner surfaced in the present case and thus, apprehending his arrest, he approached the Court of learned Sessions Judge, Kurukshetra praying for the grant of anticipatory bail. On hearing both the sides, finding no merit in the petition filed by the petitioner, the learned Sessions Judge, Kurukshetra declined the same vide her order dated 29.11.2024. Hence being aggrieved, the petitioner is before this Court by way of filing the present petition praying for the grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that neither the petitioner is named in the FIR nor there is any incriminating material against him and thus, he has been falsely and frivolously implicated in the present case. He has submitted that during the investigation, the Investigating Agencies have arrested the co-accused and it is on the disclosure statement of co-accused, namely, Paras, the petitioner has been nominated in the present FIR. He has submitted that the disclosure statement made by co-accused is not an admissible evidence. He has submitted that the petitioner is a labourer and has no relation with the alleged occurrence. He has thus submitted that there being no *prima facie* case having been made against the petitioner, he deserves to be granted anticipatory bail.

4. Notice of motion.



5. On asking of the Court, Mr. Sumit Jain, Addl. A.G., Haryana appears and accepts notice on behalf of the respondent-State. He however has opposed the submissions made by learned counsel for the petitioner and has submitted that CIA, Kurukshetra is carrying out the investigation in the present case in which 03 co-accused, namely, Sahil Arora @ Mard, Arvind and Bharat were found to have been involved. He has submitted that from the co-accused, the recoveries were also made. He has submitted that during the questioning of the co-accused, it has been found that the stolen ornaments were sold to the petitioner, namely, Rahul. He has submitted that the investigation is at threshold and for unraveling the mystery, custodial interrogation of the petitioner is essential. He has thus submitted that the petition being devoid of any merit deserves to be dismissed.

6. Heard.

7. The Court has heard learned counsel for the parties and perused the record with their able assistance.

8. As deciphered from the facts and circumstances of the case, the alleged occurrence had taken place when the complainant was away from his home from 31.08.2023 to 05.09.2023. On his return, the theft in his house was found and thus, the present FIR was lodged. The investigation is in progress since then. Co-accused have been arrested by the CIA, Kurukshetra and it is during their interrogation, the role of petitioner has surfaced. The stolen ornaments have been said to be sold to the petitioner for an amount of Rs.90,000/-.



9. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) BNSS which reads as under:-

Direction for grant of bail to person apprehending arrest.

- (1) *Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*
- (i) *the nature and gravity of the accusation;*
 - (ii) *the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;*
 - (iii) *the possibility of the applicant to flee from justice; and*
 - (iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.*

10. As per the law settled by the Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632***, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to



injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is



willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

11. The Hon'ble Supreme Court in ***State Vs. Anil Sharma, (1997) 7SCC 187***, held as under:-

“6.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 favorable 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 materials 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 need 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.

12. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been prima facie found. Needless to say, the investigation is at threshold and in the facts



and circumstances, custodial interrogation of the petitioner would be essential and granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

13. In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11.12.2024
rittu

(RAJESH BHARDWAJ)
JUDGE

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