Susheel Kumar And Others vs State Of Haryana on 21 May, 2012

Author: Paramjeet Singh

Bench: Paramjeet Singh

Crl. Misc. No.M-13911 of 2012 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No.M-13911 of 2012
Date of Decision : 21.05.2012

Susheel Kumar and others

.... Petitioners

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present:- Mr. J.S. Bedi, Advocate
for the petitioners.

Mr. Amandeep Singh, AAG, Harynaa

PARAMJEET SINGH, J. (Oral)

This order will dispose of an anticipatory bail application filed on behalf of the petitioners under Section 438 Cr.P.C. in case FIR No.290 dated 04.12.2011 under Sections 342/387/506/120-B IPC and 7/13 of Prevention of Corruption Act, 1988 registered at Police Station Sector-31, District Faridabad.

Brief facts:

> The aforesaid case has been registered at the instance of Superintendent of Police, Faridabad on an information received from Deputy Superintendent of Police (Crime), Faridabad through Letter No.486/T dated 25.11.2011 that about three months ago, the officials posted at CIA Staff, Sector 30, Faridabad namely ASI Dalbir Singh-No.28, Sushil Kumar-No.240, Constable Subhash Chander-No.3199, Constable Kuldeep Singh No.1424 contacted Sewak resident of District Palwal. Sewak is brother-in-law of Dalbir Singh and is a person of criminal nature. Sewak got arrested one unknown criminal whom he knew before along with two other persons.

The petitioners apprehended three persons and put them in car and took them to Sector 30 Police Lines and gave them threats to implicate them in false cases and further threatened them to get them arrested by concerned police. In this manner, they extorted huge amount of money in lacs through Sewak and distributed among themselves. Investigation in this regard was carried out by the Investigating officer (CIA) and Dy. Superintendent of Police (Crime), Sector 30, Faridabad. The alleged facts were found to be correct. The petitioners police officials admitted their guilt in writing that they all five came to police line Sector 30 by Government vehicle and by giving threats to falsely implicate and under threat to get arrested by concerned officials, they extorted huge amount of money in lakhs through Sewak and divided the same among themselves. The above mentioned police officials by detaining unknown criminals in illegal detention and by misusing their official position being police officers/officials, committed offence by extorting huge amount of money and had tarnished the image of the police. So the case under the provisions of Indian Penal Code and Prevention of Corruption Act was registered.

Petitioners No.1 and 2 filed application for anticipatory bail before the Addl. Sessions Judge, Faridabad and were initially granted interim bail vide order dated 31.03.2012 (Annexure P-1) and petitioners No.3 and 4 filed separate anticipatory bail application and were granted interim bail vide order dated 03.04.2012 (Annexure P-2). However both the applications of petitioners No.1 and 2 and petitioner Nos.3 and 4 were dismissed by Addl. Sessions Judge, Faridabad vide separate orders dated 01.05.2012 (Annexure P-3 and P-4) on the ground that allegations against the petitioners are of serious nature and petitioners are police officials.

Contentions:

Learned counsel for the petitioners contended that in fact no FIR could have been registered on the basis of allegations in the FIR. Sewak is not related to Dalbir Singh-petitioner No.2. Sewak is brother-in- law of brother of Dalbir Singh. Learned counsel contended that petitioners had participated and felicitated the investigation of the case when they were granted interim bail by the Addl. Sessions Judge. It is further submitted by learned counsel for the petitioners that a perusal of the FIR discloses that allegations levelled in the FIR are without there being any complainant. It is nowhere mentioned in the FIR as to from whom the alleged amount was received by the petitioners by giving threat and misusing the official position, being police officials. The police is simply relying upon the statement got recorded from the petitioners in writing by way of inducement by the persons in authority with a promise that if they tell the truth, it would be better for them. Such persuasion has resulted in extracting false confession which is not admissible in law nor it can be used against petitioners. In support of his contention, learned counsel has relied upon Sections 25 to 27 of the Evidence Act to contend that a confessional statement made by a person at the time when he was neither an accused nor in police custody, cannot be used against him when he is subsequently accused of an offence. Learned

counsel has specifically referred to Section 25 of the Evidence Act and has relied upon para 6 of the judgment in the case of Devi Ram Patt Ram Vs. The State, AIR 1962-Punjab Page-70. Para 6 of the judgment reads as under:

"Under Section 25 a confession, which is made to a police officer, cannot be proved against the person who is accused of an offence. This section does not set out anything regarding the state of the person who is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The section merely means that when an accused person is being tried, a confession, which he, on a previous occasion made to a police officer cannot be proved against him. It is not specified that the accused person must have been an accused person at the time of making the statement, nor need he have been in police custody. This meaning of Section 25 has been accepted by Court and there are rulings to the effect that Section 25 applies to a case where a confessional statement is made by a person who was not an accused person at the time of making the statement but is being tried subsequently. Section 26 deals with the case of a person who is in police custody at the time he makes the statement. It therefore, follows of necessity that he must be an accused person, because only an accused person could be in the custody of police when he is making a confessional statement. Therefore, when a confessional statement is made by an accused person who is in police custody, that statement is admissible in evidence unless, it is made in the immediate presence of a Magistrate. Section 27, however apparently provides an exception to these two sections, but a careful reading shows that it is not really an exception to section 25 at all but only an exception to Section 26, because Section 27 contains the phrase "in the custody of a Police Officer". The confessional statement, therefore, which is being considered in Section 27, is a statement which is made by a person in police custody. It is also made by a person accused of an offence" Now, if we consider these two phrases together, it follows inevitably that the person, when he made the statement, was an accused person and he was also in police custody. To place any other interpretation upon the wording of Section 27, would be to do violence not only to its spirit but also to its language, and therefore, it is quite clear that only those confessional statements are being considered under Section 27 which are made by accused persons while they are in police custody. Such confessional statements are admissible in evidence provided they have led to the discovery of a fresh fact. If the statement is made by a person who is a stranger or a prosecution witness, then such statement is not admissible in evidence despite the fact that it amounts to a confession and does lead to discovery of a new fact.

In the present case we find that the petitioner was not an accused person. He was in the position of a prosecution witness who had made a report of having been robbed on the previous day. When he began making the statement on the 29th morning, his position was still that of a prosecution witness. When he finished making the statement, he had, no doubt, implicated himself, and the police may have begun to treat him as an accused person and, in a sense, he could also be said to have been in

police custody, because when he had finished making the statement, the police must have placed restrictions upon his movements. But this state of affairs prevailed only after he had completed making his confessional statement. When he began making it and when he was in the course of making it, he could not be said to be an accused person nor could it be said that he was in police custody. That being so, Section 27 could not make that statement admissible in evidence.

This matter was considered by Abdul Qadir J. in Jalla v. Emperor, AIR 1931 Lah 278. In that case the dead body of a person was discovered as the result of a statement made by a person who was not in police custody and who was not an accused person. The police subsequently decided to prosecute him, and his confessional statement, which had led to the discovery of the dead body, was sought to be proved. Abdul Qadir J. took the view that this statement could not be proved, because it did not come within the purview of Section 27, Indian Evidence Act.

A similar question came up for consideration before the Lahore High Court in Chetu v. Emperor, AIR 1948 Lah 69 and Teja Singh J. took the same view. He held that a confessional statement made by a person at a stage when he is not accused of any offence, and as a result of which certain articles are recovered, is not admissible in evidence against that person under Section 27 when he is subsequently sought to be prosecuted in respect of those articles. A Division Bench of the Andhra High Court took precisely the same view in re Malladi Ramaiah, AIR 1956 Andh 56. Headnote (a), which reproduces substantially the decision of the Court, is in the following terms:

"Before the provisions of Section 27, Evidence Act are attracted, two essential requirements should be satisfied, namely, that the person making the statement is accused of any offence and is also in the custody of a police officer. It is only then that the information leading to the discovery could be received in evidence. If either of the two conditions is not complied with, the statement would fall outside the purview of that Section."

With this observation I agree with great respect." Learned cousnel for the petitioners further cited judgment in the case of Sheikhi Vs. State of Rajasthan, 1968 CAR 17 (SC) to contend that FIR lodged on the basis of writing incriminating the petitioners, if that writing is treated as confession, is inadmissible, the Court cannot read the confessional part at all, then there would be a little value left in the first information report.

Learned counsel for the petitioners further relied upon AIR 1939 Privy Council 47 titled as Pakala Narayana Swami Vs. Emperor to contend that Section 162 of the Code of Criminal Procedure is confined to the statements made to a police officer in course of an investigation. Section 25 of Evidence Act covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation. Section 27 seems to be intended to be a proviso to Section 26 which relates to any statement made by a person whilst in custody of the police and

appears to apply to such statements to whomsoever made. Such statements are not covered by Section 162. Learned counsel further relied upon judgment of Hon'ble Supreme Court in the case of Nandini Satpathy Vs. P.L. Dani and another, 1978 (2) SCC-424 to contend that Section 161 Cr.P.C. 'any person' includes the accused. Section 161 Cr.P.C. enables the police to examine the accused during investigation but, the prohibitive sweep of Article 20(3) of the Constitution of India goes to the stage of police investigation not commencing in Court only. In fact, the provisions of Article 20(3) of the Constitution of India and Section 161 (2) Cr.P.C., 1973 substantially cover the same area so far as police investigations are concerned. The ban on self-accusation and the right to silence, while an investigation or a trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. The petitioners could be said to accused only if there would be any evidence.

In response to notice of motion, learned State counsel put in appearance along with Sub Inspector Anirudh Kumar who produced the police file. Learned counsel for respondent-State has strongly opposed the contentions raised by learned counsel for the petitioners. It is contended by learned State counsel that petitioners are police officers, allegations against them are for indulging in misusing their position and authority, thereby extorting money in connivance with Sewak and each other. In a case involving corruption by a public servant by abusing his official position, the Courts are required to be slow in offering any protection and must give the investigating officer free hand to interrogate the accused so as to reach to the bottom of the matter specifically when the victim is not traceable and in this regard custodial interrogation is qualitatively more elicitation oriented then questioning a suspect who is well ensconced with an order under Section 438 Cr.P.C. In such like case, effective interrogation of petitioners, being suspected persons, is of tremendous advantage in disinterring many useful information and also material which could have been concealed. Success in such interrogation would elude if suspected person knows that he is well protected or insulated by a pre- arrest bail order during the time he is interrogated. Very often interrogation under such condition would reduce into a mere ritual. It is further contended that although the petitioners initially joined investigation while on interim bail granted by Addl. Sessions Judge but they are required to be further interrogated and their custodial interrogation is must. So petitioners are not entitled to bail. In the backdrop of above contentions, learned State Counsel prays that pre-arrest bail application should be dismissed. Learned State counsel further contended that the proposition raised by learned counsel for the petitioners that confession made by the petitioners in writing cannot be used against them, is not in dispute. However, the said proposition can only be raised at the stage of trial. Only on this ground taken by the petitioners, the investigation of the case cannot be scuttled at the threshold.

Conclusion:

> I have gone through the police file including the case diary brought by Sub-Inspector Anirudh Kumar posted at Police Station Sector 31, Faridabad and also perused the orders (Annexure P-3 and P-4) of the Addl. Sessions Judge.
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> A perusal of the police file reveals that although petitioners have joined the investigation when they were on interim bail granted by Addl. Sessions Judge, but

they were not cooperating. The whereabouts of co-accused namely Sewak who is alleged to be brother-in-law of ASI Dalbir Singh-petitioner No.2 (though stated by learned counsel that he is brother-in-law of Dalbir Singh's brother) are yet to be verified and the petitioners have been deliberately concealing the whereabouts of Sewak. He is the person who in connivance with the petitioners had got apprehended the victims/may be criminal, who are yet to be nominated and he had helped the petitioners in extorting lacs of rupees from those persons, which have been divided by the petitioners amongst themselves.

A perusal of the police file further reveals that when the matter came to the notice of the senior police officials and enquiry was carried out, the petitioners had given in writing, admitting their guilt and also admitted that they had distributed the extorted money amount amongst themselves. Such an act prima facie amounts to admission and confession. This is yet to be determined whether such a confession or admission is induced one as contended by the learned counsel for the petitioners, or it is voluntary and can be used against the petitioners or not. Since it is to be determined at the time of the trial whether such writing as given by the petitioners has been given as a result of inducement by a person in authority and the alleged confession is involuntary, the contention of the learned counsel at this stage that it cannot be used against the petitioners, cannot be accepted. Admission is statement by a person that is adverse to that person's interest. It can be formal or informal. It is confession's little brother. It is only one of the factors and not decisive one. The rational behind this plea does not admit to go against their own interest unless they are true. The judgments cited by the learned counsel for the petitioner in the cases of Devi Ram Patt Ram (supra), Sheikhi (supra), Pakala Narayana Swami (supra) and Nandini Satpathy (supra). In the said judgments the admissibility of the confession has been adjudged after the trial at the time of final hearing, not at the initial stage. Here is a case where the investigation has just started. So judgments referred by the counsel for the petitioners are not applicable to the case in hand. In such circumstances, proper custodial interrogation of the petitioners is necessary for recovery. Any hasty interim relief to the petitioners will hamper the fair investigation.

With regard to the contention of the learned counsel for the petitioners that FIR should not have been registered in the case as there is no complainant, I do not agree with the contention of the learned counsel for the petitioners. FIR is an important document as it sets the process of criminal justice delivery system in motion. Crime plagues every nook and cranny of the society. Citizens rely upon the crime protectors and law enforcers to keep safe and uphold the criminal justice system. What would happen if they are the ones committing it? This appears to be one case where the officers that uphold their duty and work to expose their colleagues, deserve public praise and appreciation. Police officers/officials are supposed to maintain higher standards than ordinary people, in order to keep their ranks clean and free from crime involvement. The petitioners are protectors allegedly turning predators. A defender is not supposed to be an offender. This is not expected from the police

officials that they will misuse their authority to extort money from the people. Allegedly the petitioners have not only misused their official position, but after extorting money from the persons who may be indulging in some illegal activities and may be offenders of serious offence, had been allowed to go scot free. So petitioners cannot be granted relief of anticipatory bail. The allegations against the petitioners are very serious and sensitive and needs to be probed by all means including custodial interrogation.

The Hon'ble Supreme Court in the case of State Vs. Anil Sharma, (1997) 7 SCC 187 referred to the necessity of custodial interrogation and importance thereof particularly in matters like the one in which the petitioners are involved. The observations made by Hon'ble Supreme Court are reiterated hereunder:

"Custodial interrogation is qualitatively more elicitation oriented then questioning a suspect who is well ensconced with favourable order under Section 438 of Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also material which could 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 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 those entrusted with the task of disinterring offences would not conduct themselves as offenders."

The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting anticipatory bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted or declined, particularly, where the accused are charged of having committed a serious offence.

In the light of the above observations and nature of allegations against the petitioners, custodial interrogation of the petitioners is utmost necessity and warranted to bring out the truth.

For the reasons stated above, I am not inclined to grant concession of pre-arrest bail to the petitioners. The views expressed above shall not be taken as expression on the merits of the case.

Dismissed.

(PARAMJEET SINGH) JUDGE 21.05.2012 vcgarg IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Crl. Misc. No.M-13911 of 2011 Date of Decision : 05.2012 Susheel Kumar and others .... Petitioners Versus State of Haryana .... Respondent CORAM: HON'BLE MR.

JUSTICE PARAMJEET SINGH Present:- Mr. J.S. Bedi, Advocate for the petitioners.

Mr. Amandeep Singh, AAG, Harynaa PARAMJEET SINGH, J. (ORAL) Reserved