

Daya Rani And Others vs State Of Punjab on 12 September, 2024

Neutral Citation No:=2024:PHHC:119984

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M M No.36744 of 2024
Date of decision: 12.09.2024

DAYA RANI AND OTHERS

Versus

.... Petitioners

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Vishal S. Narwal, Mr. Arshdeep Mraad and
Mr
Mr. Khushwant Saharan,
Saharan, Advocate
Advocates for the petitioners.

Ms. Ruchika Sabherwal, Sr. D.A.G., Punjab
Punjab.

Mr. Diwan S. Adlakha, Advocate for the complainant.

MANISHA BATRA, BATRA J. (oral)

1. Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR 148 dated 10.07.2024 registered under Sections 420, 384 and 511 of IPC, 1860 at Police Station City Budhlada, Budhlada, District Mansa Mansa.

2. Vide order dated 02.08.2024, passed by this Court, the petitioners were released on interim bail and were directed to join investigation. Order dated 02.08.2024, passed by this Court, reads as under:

"Heard.

The petitioners are seeking benefit of pre pre-arrest arrest bail in case arising out of FIR No. 148 dated 10.07.2024 registered under Sections 420, 384 and 511 of IPC, 1860 at Police Station City Budhlada, District Mansa, which has been registered on

the basis of a complaint lodged by the complainant complainant-respondent respondent No.2 1 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M Prem Chand alleging therein that Shri Ramdhari who was husband of petitioner No.1 and father of petitioners No. 2 and 3 respectively, was his real brother. There was dispute between them with regard to their their properties. On 14.01.2023, the petitioners No. 1 and 2 forcibly entered into the house of the complainant and had assaulted his son and himself. Both of them were admitted in Government Hospital, Budhlada for treatment. Though, the police had been informed about the incident but subsequently due to intervention of the respectable members of their society as well as relatives, a compromise was effected which was reduced into writing by his brother Ramdhari and himself. In pursuance of the terms of the said compromise, the petitioner had executed a deed of transfer in favour of his brother Ramdhari. His brother died on 25.02.2023 due to some heart ailment. The complainant alleged that shortly after the death of his brother, the petitioners No. 1 and 2 started extending threats to implicate him in false case, unless he parted with a sum of Rs. 12,00,000/- and also refused to abide by terms and conditions of 12,00,000/-

the agreement which was executed between his brother and himself. As such, he prayed for taking action against the petitioners.

The petitioners have filed this petition seeking benefit of prearrest bail. It is argued by their counsel that the instant petition which has been filed by the petitioners directly before this Court is very much maintainable as no restriction has been placed 2 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M by law with regard to an applicant approaching the High Court directly for seeking relief under the provisions of Section 438 of Cr.P.C. To buttress his argument on this point, learned counsel for the petitioners has relied upon the authorities cited as 'Onkar Nath Aggarwal Vs. State' 1976 Criminal Law Journal 1142 (FB) (Allahabad), 'Mohan Lal Vs. Prem Chand, 2012 (2) RCR (Criminal) 269', Balan Vs. State of Kerala, 2003(4) RCR (Crl.), 'Ranjit Singh Virk Vs. State of Punjab, 19 1997(3) RCR (Crl.).

It is further argued by learned counsel for the petitioners that no case for commission of offences punishable under Sections 384 read with Section 511 or 420 of IPC has been made out against either of them and these provisions are not at all attracted, even if, the allegations as levelled in the FIR are considered to be correct on the face of record. He has further argued that infact, the FIR by the complainant has been lodged against the petitioners as a counter blast to FIR No. 9 dated 05.01.2024 registered at Police Station Budhlada.

It is further argued that there is delay of more than ten months from the date when the alleged threats were extended by the petitioners to the complainant, the allegations are vague as no reference to any particular day, date or exact place where the alleged attempt was made by the petitioners to deceive the complainant as has been mentioned in the FIR. It is also argued that there is also no reference to any wrongful loss being caused to the complainant or any dishonest concealment of the facts on 3 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M the

part of the petitioners thereby attracting the ingredients of cheating. Learned counsel while further submitting that the custodial interrogation of the petitioners is no more required, they are ready to join the investigation and further that no recovery is to be effected from them, has urged that the petition deserves to be allowed.

Per contra, learned State counsel assisted by learned counsel for the complainant has vehemently argued that the present petition is not maintainable before this Court as the present petitioners have not given any satisfactory reason for directly approaching this Court without availing their remedy before the concerned Sessions Court. It is further argued that even otherwise, the custodial interrogation of the petitioners is required for conducting thorough investigation in the matter by the police and no exceptional circumstances has been made out. Hence, it is urged that the petition does not deserve to be allowed. Reliance has been placed upon the authorities cited as 'Hare Ram and others Vs. State of Chhattisgarh, 2021 ILR (Chhattisgarh) 1562', 'Ankit Bharti Vs. State of Uttar Pradesh, 2020(3) Cri.CC 70, 'Kwmta Gwra Brahma Vs. State of Assam (DB), 2015(32) RCR (Criminal) 313' and 'Smt. Priya Agrawal @ Shubhlata Agrawal and others Vs. State of Madhya Pradesh, 2013(7) RCR (Criminal) 1038.' I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have 4 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M gone through the record carefully.

carefully. So far as the question of maintainability of this petition which has been filed by the petitioners directly before this Court without firstly approaching the concerned Sessions Court is concerned, the position of law in this regard has been well settled by Full Bench of High Court of Allahabad in Onkar Nath's case (Supra) which has been subsequently relied upon by the Full Bench of the same Court in Ankit Bharti's case (supra). As per Onkar Nath Aggarwal's case (supra), the Court has unfettered discretion (supra), discretion in the matter under Section 438 of Cr.P.C. which can be exercised according to the exigencies of each case. In Ankit Bharti's case (supra), the Full Bench of Allahabad High Court had observed that there was no conflict with regard to the above stated proposition and that the matter even did not merit an authoritative exposition by a Bench larger than which had decided Onkar Nath Aggarwal's case (supra). It was also observed that the discretion vested in the (supra).

Court under Section 438 of Cr.P.C. has been wisely left unfettered by the legislature and it must be recognized as being available to be exercised dependent upon the facts and circumstances of each case. Though in the remaining authorities which have been cited by learned counsel for the complainant, it has been mentioned that in exceptional circumstances, an accused is entitled to move anticipatory application directly before the High Court, however, in view of the observations as made in Onkar Nath Aggarwal's case (supra) which still holds the field, this Court is inclined to 5 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M observed that no ground to dismiss this petition has been made out due to the reason that the petitioners have directly come to this Court without availing their remedy before Sessions Court as the same is not a condition precedent and there is no absolute rule of law in this regard. Moreover, this Court can effectively exercise jurisdiction vested in it as the ultimate object is to protect a person from arrest, if a case is made out to do so as observed in Balan's Case (supra), wherein it was held that it is equally important to remember that in matters of personal liberty, the right conferred on a citizen has to be

liberally construed.

Proceeding further, the complaint in this case had been filed before the police only on 05.02.2024 i.e. after a gap of one year and four months from the alleged attempt made by the petitioners to extort money from the complainant since as per the latter, they they had tried to extort a sum of Rs. 15 15-20 20 lakh from him 15 20 days after the death of Shri Ramdhari on 25.02.2023. The 15-20 FIR in this case was registered on 10.07.2024 i.e. five months after the petitioners had lodged FIR No. 9 dated 05.01.2024 against the complainant.

complainant. It is a debatable question as to whether a case for commission of offence of cheating and attempt to extort money has been made out against the petitioners or not? In view of this discussion, direction is hereby given to the petitioners to appear before the Investigating/Arresting Officer to join appear investigation within ten days or as and when required thereafter by the Investigating Officer. In the event of their arrest, the 6 of 7 Neutral Citation No:=2024:PHHC:119984 CRM-M Investigating/Arresting Officer shall release the petitioners on interim bail on furnishing personal/surety bonds to his/her satisfaction. The petitioners shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Adjourned to 12.09.2024 12.09.2024."

3. Learned State counsel, on instructions from the Investigating Officer, has submitted that that the petitioners petitioners have joined investigation and they are not required for custodial interrogation.

4. Keeping in view the above mentioned facts and circumstances, without commenting on the merits of the case, the present petition is allowed and the order dated 02.08.2024, .2024, granting interim bail to the petitioner petitioners,, is made absolute, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure.

(MANISHA BATRA) 12.09.2024 JUDGE Jyoti-IV Whether speaking/reasoned: Yes/No. Whether reportable : Yes/No 7 of 7