
Before M.M. Kumar, J

MOHD. ZAKIR HUSSAIN,—Petitioner

versus

STATE OF HARYANA,—Respondent

Crl. M. No. 45691/M OF 2003

13th October, 2003

Code of Criminal Procedure, 1973—S. 438—Registration of two FIRs against petitioner—Petitions filed by petitioner for quashing of FIRs dismissed by the High Court and prayer for grant of pre-arrest bail also declined—Serious allegations against petitioner of forgery of documents to show validity of his marriage by converting religion of a girl and threatening and pressurizing a Maulvi of a Masjid to depose in a Court of law according to his wishes—Grant of pre-arrest bail to the petitioner likely to impede the investigation and the same will be misused by him—For fair and impartial investigation petitioner not entitled to pre-arrest bail—Petitions dismissed.

Held, that the petitioner is alleged to have forged Nikahnama in respect of a young girl, who is alleged to be already married. In his statement made under Section 164 Cr. P.C. on 1st September, 2003 by Maulvi Abdul Qayyum has stated before the Judicial Magistrate Ist Class that petitioner has been threatening and pressurising him to make a statement in a Court of law according to his tutoring. After reading the statement made by Maulvi Abdul Qayyum, a reasonable man would entertain a valid apprehension that if the petitioner is granted the benefit of pre-arrest bail, then the same is likely to be misused. The petitioner-accused is likely to indulge in tampering of evidence and threatening the witnesses. A reasonable belief stems from the statement of Maulvi Abdul Qayyum that the concession of bail could be used by the petitioner-accused for committing further cognizable offences like the one indicated in that statement under the Arms Act, 1959. The Criminal Procedure Code has made elaborate provision for fair and impartial investigation of all cognizable offences. An order of pre-arrest bail is likely to impede the investigation. The Court cannot by arming an accused with an order of pre-arrest bail grant him a license to indulge in actions which

would subvert the fair investigation. The law cannot take such a risk which would result in harm to the investigating agencies and facilitate the illegal designs of the petitioner-accused. An ounce of prevention is worth a pound of cure.

(Paras 10 and 11)

Narender Hooda, Advocate, *for the petitioners*

N.K. Joshi, AAG Haryana

O.P. Goyal, Sr. Advocate with Parmod Goyal, Advocate *for the complainant.*

JUDGMENT

M.M. KUMAR, J.

(1) By this order, I propose to dispose of Crl. Misc. No. 45691-M of 2003 and Crl. Misc. No. 45906-M of 2003 as prayer for pre-arrest bail has been made by one Sh. Mohd. Zakir Hussain-accused in both the petitions which have been filed under Section 438 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr. P.C.'), (to be referred as First and Second petition). In the first petition, the petitioner has prayed for pre-arrest bail in case FIR No. 161, dated 18th July, 2003 registered under Sections 323 and 506 IPC P.S. Mahesh Nagar, Ambala and a similar prayer has been made in the second petition by Sh. Mohd. Zakir Hussain alongwith one Sh. Jameel Ahmed in case FIR No. 190, dated 29th August, 2003 registered under Section 419, 420, 465, 466, 467, 471, 124-A, 153-A, 295 read with Section 120-B IPC, P.S. Mahesh Nagar, Ambala.

(2) The prosecution version as projected in the FIR No. 161 dated 18th July, 2003 is based on a complaint made by Sh. Ashok Kumar Sharma S/o Laxami Narain Sharma, who is father of one Ms. Avedna Sharma. According to the allegations made by the complainant in the FIR, Ms. Avedna Sharma his daughter was married to Sh. Amitabh Thakur at Delhi and before her marriage he used to receive threats of dire consequences if he married his daughter elsewhere. The complainant suspected the involvement of petitioner-accused Sh. Mohd. Zakir Hussain, Assistant Engineer working in the Wakf Board, Ambala because he had been trying to allure his daughter Ms. Avedna Sharma. In this regard, the complainant approached the

office of the Wakf Board to make him understand but he was not found in the office. The complainant further alleged in the FIR that on 11th July, 2003 at about 8.30 he was present alongwith his son Anuj and his relative Shamsher Singh Kaushal at the gate of his house. They were talking about the marriage programme of Ms. Avedna Sharma. At that time, a person alighted from white colour Maruti Car bearing registration No. HR-02-0016 and claimed that he was Sh. Mohd. Zakir Hussain and why did the complainant go to his office. He is alleged to have threatened the complainant that if Ms. Avedna Sharma was married elsewhere, then your entire family will be eliminated and be prepared for the consequences. He alleged to have caught the complainant from the neck and slapped him. On the intervention of the son of the complainant and his relation Shamsher Singh Kaushal, the petitioner-accused Sh. Mohd. Zakir Hussain went away and gave a threat that the complainant alongwith other would be killed on the first available opportunity. The complainant has claimed that on account of the prestige of the family, he had kept quiet and married his daughter on the date fixed. According to the FIR, the allegations disclosed the commission of offences under Sections 323 and 506 IPC.

(3) The second FIR, which is subject matter of second petition is based on a complaint filed by one Anuj Sharma, brother of Ms. Avedna Sharma. The complaint was presented before the Judicial Magistrate, Ist Class, who exercising powers under Section 156(3) Cr. P.C. has referred the same for investigation to the police of concerned police station. The allegations as disclosed in the FIR disclose that the petitioners, have committed various offences. The petition seeking quashing of the aforementioned FIR being CrI. Misc. No. 40509-M of 2003 has already been dismissed by this Court on 11th September, 2003 holding that the allegations constitute the commission of cognizable offences and cannot *prima, facie* be held to be false. The offences under Sections 420 and 466 IPC are non-bailable and the sentence provided for those offences is seven years and fine. The offences under Sections 124-A, 153-A, 295 are also non-bailable and so is the offence of criminal conspiracy under Section 120-B.

(4) It is pertinent to mention that before the registration of second FIR on 29th August, 2003, the petitioner alongwith Ms. Avedna Sharma filed CrI. Misc. No. 31070-M of 2003 under

Section 482 Cr. P.C. seeking directions to the respondents not to harass the petitioner as well as Ms. Avedna Sharma and provide them police protection. It was claimed that Ms. Avedna Sharma has changed her name as Alia Hussain by adopting Muslim religion. It was further claimed in the petition that her Nikah Ceremony has been performed with Mohd. Zakir Hussain without the consent of her parents. Notice of the aforementioned petition was issued to the respondent-State alone and this Court on 18th July, 2003,—*vide* Annexure P-2 (in Crl. Misc. No. 45691-M of 2003) appended with the first petition directed the respondent-State to provide Sh. Mohd. Zakir Hussain-petitioner and Ms. Avedna Sharma adequate police protection.

(5) At this stage, it may be mentioned that the father of Ms. Avedna Sharma, Sh. Ashok Kumar Sharma alongwith another filed Crl. Writ Petition No. 869 of 2003 praying for Writ of Habeas Corpus with the allegations that Ms. Avedna Sharma is being kept in illegal custody. Ms. Avedna Sharma was produced in the Court, who stated that she is married and is living with the petitioner-Mohd. Zakir Hussain after solemnisation of her marriage by performing Nikah Ceremony at Pinjore. She further stated that she was married and had made the statement voluntarily. The petition was disposed of by directing the Panchkula police to provide police escort to Ms. Avedna Sharma as well as to Mohd. Zakir Hussain. The aforementioned order dated 30th July, 2003 is Annexure P-3 (in Crl. Mis. 45691-M of 2003) with the petition.

(6) It would also be pertinent to mention that petitioner-accused filed Crl. Misc. No. 40509-M of 2003, in which prayer was made for quashing FIR No. 190, dated 29th August, 2003, which is subject matter of second petition. The aforementioned petition for quashing the FIR was dismissed on 11th September, 2003. While dismissing the aforementioned petition, this Court made a reference to the statement of a Maulvi Sh. Abdul Qayyum recorded under Section 164 Cr. P.C. on 1st September, 2003. Shri Abdul Qayyum stated that no Nikahnama has been signed by him. It has further been observed that the affidavits with regard to conversion of religion was also forged. The observations made in the aforementioned order as under :—

“When the facts of the instant case are examined in the light of the principles laid down by the Supreme Court in various judgements referred to above, no doubt is left that

bare perusal of the FIR, which is based on the complaint filed by complainant-respondent No. 2, would show that it discloses the allegations which may constitute various offences under various provisions of the IPC. Reference may be made to the allegations levelled in paragraphs 2 to 7 of the FIR reproduced above which sufficiently discloses the commission of offences of forging Nikahnama and the affidavits with regard to conversion of religion. The allegations further disclose the commission of offences of kidnapping and abduction. It is also clear that the allegations satisfy the ingredients of provoking enmity between different groups on the grounds of religion and race. The allegation of criminal conspiracy have also been substantiated. Therefore, it cannot prima facie be concluded that the basic ingredients of substantive penal laws alleged to have been committed under Sections 419, 420, 465, 467, 471, 506, 148, 153-A, 295 and 120-B IPC have not been satisfied. It is further relevant to mention that the photographs Annexures R-2/2 to R-2/6 show the performance of Ring Ceremony and marriage of Ms. Avedna Sharma with Mr. Amitabh Thakur. The statement of Mr. Abdul Kayum recorded under Section 164 Cr. P.C. before the Magistrate on 1st September, 2003 would further show that the allegations are not totally without substance. Therefore, if any of the propositions laid down in Bhajan Lal's case (supra) and other cases is applied to the facts of the present case, then the FIR has been recorded by the police on the orders issued by the Judicial Magistrate, Ist Class, Ambala on 27th August, 2003, Annexure R-2/10, there is added prohibition because the Magistrate in his order states that after hearing the complainant and keeping in view the facts and circumstances narrated in the complaint, it was required to be sent to the police station concerned for registration and investigation of the case under Section 156(3) Cr. P.C. Therefore, I do not find any valid reason to order quashing of the FIR."

(emphasis added)

(7) Mr. Narender Hooda, learned counsel for the petitioners has argued that the allegations made in the first petition would disclose only the commission of bailable offences under Sections 323 and 506 IPC, which is registered on 18th July, 2003. The learned counsel has further argued that in the second FIR, offences under Sections 420, 466, 467, 124-A, 153-A, 295 and 120-B IPC at best could be non-bailable. According to the learned counsel, some of these allegations are manifestly false because there was no mention about these imputations in Crl. Misc. No. 33799-M of 2003, which is, said to have been filed by the father and mother of Ms. Avedna Sharma on 30th July, 2003, which is pending for consideration before this Court. The learned counsel has pointed out that no allegation constituting offences under Sections 153-A and 295 IPC etc. have been levelled and these have been concocted later on. The learned counsel has further argued that the petitioners deserve to be enlarged on bail by extending them the concession of Section 438 Cr. P.C. as no recovery is to be effected nor any custodial interrogation would be necessary. He has placed reliance on the judgement of the Constitution Bench of the Supreme Court in the case of **Gurbaksh Singh Sibbia versus State of Punjab, (1)** and argued that even if some recovery is to be effected under Section 27 of the Evidence Act, it would not constitute a valid ground to refuse pre-arrest bail because for the purpose of Section 27, the accused would be considered to be in custody and such a condition could be imposed under Section 438(2) so as to ensure uninterrupted interrogation. He has referred to para 19 of the judgement to submit that it is always possible for the prosecution to claim the benefit of Section 27 with regard to recovery of facts made in pursuance of information supplied by the accused released on bail. Another submission made by the learned counsel is that the only person, who could be aggrieved by the marriage of Ms. Avedna Sharma with the petitioner Sh. Mohd. Zakir Hussain could be her so called husband Sh. Amitabh Thakur and he has never come forward to claim any legal right.

(8) Mr. N.K. Joshi, learned State counsel has argued that it is *prima facie* shown by the statement made by Sh. Abdul Qayyum, the Maulvi from Pinjore on 1st September, 2003 that no Nikah ceremony has been performed by him and the signatures on the Nikahnama

(1) AIR 1980 S.C. 1632

were forged. According to the learned counsel, the petitioner-Mohd. Zakir Hussain has abused the process of law by making false representations before this Court by presenting a forged Nikahnama and forged affidavits regarding conversion of religion. From the statement of Sh. Abdul Qayyum recorded before the Magistrate, it is clear that Sh. Mohd. Zakir Hussain-petitioner accused has been threatening Sh. Abdul Qayyum and pressurising him to sign some documents. According to the learned counsel, the concession of bail is likely to result into threatening of witnesses and commission of other offences by the accused. In this regard, he has made a reference to the observations of this Court in the order dated 11th September, 2003 dismissing the petition filed by Sh. Mohd. Zakir Hussain-petitioner accused for quashing of FIR, which is subject matter of second petition. He has also referred to the order dated 30th July, 2003 passed by the Court. The learned counsel has further argued that the custodial interrogation of the petitioner-accused would be necessary to elicit the truth in the allegations because according to him, the allegations have been found to be credible. He has placed reliance on a judgement of the Supreme Court in the case of **State versus Anil Sharma (2)**.

(9) Mr. O.P. Goel, learned Senior counsel appearing for the complainant has argued that when CrI. Misc. No. 31070-M of 2003 was filed, no FIR was registered against the petitioner-Sh. Mohd. Zakir Hussain or anyone else. The learned counsel has further pointed out that the aforementioned petition was disposed of on 18th July, 2003 without issuing any notice either to the parents of Ms. Avedna Sharma or to her brother. The learned counsel has referred to the order dated 18th July, 2003 to show that notice was issued only to the office of Advocate General and the petition was disposed of on 18th July, 2003. He has further made a reference to certain averments made in CrI. Misc. No. 33799-M of 2003 filed by the father and mother of Ms. Avedna Sharma against the respondent-State and the petitioner-accused, who is also arrayed as respondent no. 4. The learned counsel has drawn my attention to the averments made in various paragraphs of the petition and the prayer clause. In the prayer clause, it has been prayed that the order dated 18th July, 2003 since has been passed at the back of the parents of Ms. Avedna Sharma be recalled and directions have been sought to the Senior Superintendent of Police, Ambala Cantt. to make enquiry and submit

his report. In the aforementioned petition, further prayer has been made by the parents of Ms. Avedna Sharma that direction be issued for registration of an FIR for kidnapping, forgery and illegal confinement of Ms. Avedna Sharma by the petitioner-accused Sh. Mohd. Zakir Hussain. A copy of the petition has been placed on record as mark 'A'. The learned counsel has further submitted that there is no false allegations levelled in either of the complaint, which constitute the basis of registration of FIR No. 161 dated 18th July, 2003 and FIR No. 190 dated 29th August, 2003. He has argued that while dismissing the petition for quashing of later FIR filed by petitioner-accused Mohd. Zakir Hussain, this Court has made detailed observations holding that the allegations are credible and not false. The learned counsel has further contended that a look at the prayer made in that petition would show that prayer for pre-arrest bail was also made and the same should be deemed to have been declined. For the aforementioned propositions, the learned counsel has placed reliance on a Full Bench judgement of the Calcutta High Court in the case of **Maya Rani Guin. versus State of West Bengal (3)**. The learned counsel has also relied upon a judgement of this Court is **R.K. Ranga versus State of Haryana (4)**, to argue that the veracity of the allegations levelled in the FIR cannot be gone into at this stage as it sought to be argued by the counsel for the petitioner. According to the learned counsel in any case, the petition filed by petitioner Sh. Mohd. Zakir Hussain for quashing of later FIR has been dismissed and it cannot now be said that the allegations are manifestly false.

(10) After hearing the learned counsel for the parties, perusing the averments made in both the petitions and the statement made by Maulvi Abdul Qayyum under Section 164 Cr. P.C., I have reached the conclusion that these petitions are liable to be dismissed. Petitioner-Mohd. Zakir Hussain is alleged to have forged Nikahnama in respect of a young girl, who is alleged to be already married. In his statement made under Section 164 Cr. P.C. on 1st September, 2003 by Maulvi Abdul Qayyum has stated before the Judicial Magistrate Ist Class that Mohd. Zakir Hussain has been threatening and pressurising him to make a statement in a Court of law according to his tutoring. It has been alleged that on 27th August, 2003, the accused intruded in his house at 11. A.M. and threatened him by brandishing a pistol and

(3) 2003 (1) RCR (Cr.) 774

(4) 1997 (2) RCR 568

cartridges that he has to depose in a Court of law according to his wishes. The relevant part of the statement as recorded by the Judicial Magistrate on 1st September, 2003, has been placed on record as mark 'B' and the same reads as under :—

Q. Will you give this statement on your own will ?

Ans. Yes Sir, I shall make the statement voluntarily.

Q. Are you under any pressure to give the statement ?

Ans. No Sir. There is no pressure on me to give the statement but I want to give the statement voluntarily.

Q. What do you want to say ?

Ans. When Avedna Sharma @ Aalia Hussain and Zakir Hussain appeared in the Hon'ble High Court, then we came to know from the newspaper that Avedna Sharma @ Aalia Hussain has made a statement in the High Court that her marriage (Nikah) was solemnized in Shahi Jama Masjid, Pinjore. The date of marriage (Nikah) given to be 4th June, 2003 but I was the only Imam in Shah Jam Masjid, Pinjore, at the time and even today. Avedna Sharma @ Aalia Hussain and Zakir Hussain had not come to me for marriage (Nikah) on 4th June, 2003. Zakir Hussain, Mohd. Sardar Wani and Zamil Ahmed with a receipt of Nihah (marriage) came to me on 11th June, 2003 and repeatedly insisted that I should make an entry of the receipt in my register. I flatly refused them. Mohd. Sardar Wani who is a Vigilance Officer in Punjab Wakf Board, Ambala Cantt., exercising influence of his post put pressure on me to do as they liked. But when I flatly refused them, then they showed me receipt of Nikah (marriage) and told me that it bore my signatures and they further said that whenever my presence shall be needed, they would produce me in the Court themselves and would tell to the Court that Nikahnama has been prepared by Abdul Qayyum. I again and again looked at the signatures and found that my signatures have been forged but that was similar to my signature. I had never put the above signatures. Zakir Hussain, Sardar Wani and their men

of all cognizable offences. An order of pre-arrest bail in this case is likely to impede the investigation. The Court cannot by arming an accused with an order of pre-arrest bail grant him a license to indulge in actions which would subvert the fair investigation. The law cannot take such a risk which would result in harm to the investigating agencies and facilitate the illegal designs of the petitioners-accused. An ounce of prevention is worth a pound of cure.

(12) It is further pertinent to notice that the petitioners have successfully eluded the police since August 29, 2003 which speaks volumes of their capacity to hide themselves from due process of law for a long period. The competence of the petitioners to hide strengthen the belief that they may not even be available to the investigating agency or to the trial Court at appropriate time.

(13) I am further of the view that, the allegation of forgery of documents with the object of showing the validity of a marriage by converting the religion is also involved. Such like conversions have also not been accepted as legal by the Supreme Court in **Lily Thomas versus Union of India**, (5).

(14) Moreover, this Court has already upheld the registration of FIR, which is subject matter of second petition i.e. FIR No. 190. In the order, dated 11th September, 2003, it has been held that it cannot prima facie be concluded that the allegations made in the FIR are without any substance and the prosecution version could not be thrown over-board. The custodial interrogation as held by the Supreme Court in Anil Sharma's case (*supra*) would be more beneficial and in the interest of justice. Such interrogation has been held to be qualitatively more elicitation-oriented than questioning a suspect, who is well ensconced with a favourable order of pre-arrest bail.

(15) For the reasons recorded above, these petitions fail and are dismissed. However, it is made clear that any observation made in this order shall not be construed as an expression of opinion on merits of the matter.

R.N.R.