

(2005) 06 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No"s. 32398-M of 2005

Shashi Singh and Mansoor Ali
Khan Pataudi

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision: June 17, 2005

Acts Referred:

- Wild Life (Protection) Act, 1972 - Section 39, 9

Citation: (2006) 3 RCR(Criminal) 624

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Advocate: R.S. Cheema, with Mr. Pawan Girdhar in Criminal Misc. No. 32398-M of 2005 and Mr. Dinesh Mathur, with Mr. Anand Chhibber and Ms. Sima Gulati, in Criminal Misc. No. 32505-M of 2005, for the Appellant; Harish Ghai, Addl. A.G. Haryana with Mr. Ajay Gulati, AAG, Haryana, Mr. Veneet Bajaj, Advocate for Wild Life Trust of India, Mr. K.D.S. Hooda, Advocate for All India Bishnoi Mahasabha (Regd.) and Mr. Madan Pal, Advocate for People for Animals, Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.

This order shall dispose of Crl. Misc. Nos. 3298-M of 2005 and 32505-M of 2005, as common questions of facts and law arise therein.

2. The Petitioners pray for grant of anticipatory bail in case FIR No. 191, dated 5.6.2005, registered under Sections 9, 39 and 51 of the Wild Life (Protection) Act, 1972 (for short herein after referred to as "the Act"), at Police Station, Jhajjar.

3. HC Asha Ram and Constable Raj Kumar, who were on patrol duty in PCR No. 4, driven by Constable Rajesh Kumar, apprehended the Petitioners, who were travelling with the co-accused in two vehicles bearing registration Nos. DL-IVA-4379 (Gypsy) and DL-4CB-0523 (Honda Accord), and brought them to the Police

Station. A search of the Gypsy revealed the presence of two dead rabbits and one black buck (a deer). A DBBL gun No. 232083 along with 20 cartridges and one 22 bore gun along with a telescope, 26 rounds of ammunition, two search lights, one small axe, and one Swiss knife. Entry No. 38-A was made to that effect in the Daily Diary Register. The Petitioners and their co-accused were permitted to leave with instructions to join the inquiry/investigation as and when required. The Petitioners and their co-accused signed in column No. 2 of the aforementioned register. A copy of DDR No. 38, dated 3.6.2005 was forwarded to the District Conservator of Forest, Jhajjar, which was received in his office on 4.6.2005.

4. On 4.6.2005, the carcass of the dead animals were sent for postmortem to the veterinary hospital at Jhajjar. The dead animals were photographed showing the injuries. On an application, filed by the Inspector Wildlife, Jhajjar, the Veterinary Surgeon conducted a postmortem. After receipt of legal opinion from the Deputy District attorney, Jhajjar, FIR No. 191, dated 5.6.2005 was registered, under Sections 51, 39, 9 of the Act at Police Station, Jhajjar citing the Petitioners and others as accused.

5. On 5.6.2005, Madan Singh son of Surat Singh, one of the co-accused, was arrested. During interrogation, he suffered a disclosure statement, which was reduced into writing, in the presence of witnesses. Madan Singh, thereafter, voluntarily guided the police to the site of the occurrence, from where blood stained earth and the tyre marks of the Gypsy were lifted, in the presence of the witnesses. The place of occurrence was photographed and videographed. On 6.6.2005, Madan Singh was produced before the Chief Judicial Magistrate, Jhajjar, who directed one day's police remand. The post-mortem report was received on 6.6.2005. On the same day, a notice, u/s 160 Cr.P.C., was issued to the remaining accused including the Petitioners. On this very date, Madan Singh suffered a supplementary disclosure statement to the effect that on 3.6.2005, at about 6 p.m., he and Balwant Singh were present in D.K. Pilot Private School when Mansoor Ali Khan Pataudi, arrived with the other co-accused and expressed their desire to hunt for wild animals. All the accused departed for a hunt. After a shortwhile, the hunting party spotted a black buck and two rabbits. Petitioner-Mansoor Ali Khan Pataudi fired at the rabbits and then at the black buck killing them at the spot. The dead animals were loaded into a Gypsy, after removing entrails and making them Halal. Madan Singh suffered the above statement in the presence of Shri Vineet Garg, District Wildlife Warden and the Deputy Conservator of Forest, Jhajjar. On 7.6.2005, Madan Singh was remanded to the judicial custody.

6. In the meanwhile, apprehending arrest, Shashi Singh, the Petitioner, in Crl. Misc. No. 32398-M of 2005 preferred a petition for grant of anticipatory bail before the Additional Sessions Judge, Jhajjar. Vide order dated 9.6.2005, the said petition was dismissed for want of jurisdiction. The Additional Sessions Judge, Jhajjar declined interference, primarily on the ground that the jurisdiction to try cases for offences

committed under the Act, lay with the Special Court of Judicial Magistrate Ist Class, Faridabad.

7. It would also be appropriate to mention here that on 13.6.2005, Madan Singh was released on regular bail by the Chief Judicial Magistrate, Jhajjar.

8. Learned Counsel for the Petitioners contends that the Petitioners were detained and let off by the police in the exercise of powers of search, seizure, arrest and detention, conferred by Section 50(1)(a)(b) and (c) of the Act and, therefore, cannot be arrested and/or detained once again. It is further contended that as the equipment, allegedly used in the commission of the offence, was already in the possession of the police, no recoveries were to be effected from the Petitioners. As is apparent from the affidavit, filed by the State, the scene of the alleged crime has been identified, photographed, videographed, tyre marks of the vehicles have been lifted, pursuant to a disclosure statement, suffered by Madan Singh, co-accused and, therefore, the custodial interrogation of the Petitioners would serve no purpose. In the same breath, however, it is urged that the disclosure statements, suffered by Madan Singh, cannot be used against the Petitioners, being the statement of a co-accused.

9. It is vehemently argued that the FIR is bereft of any details as to the commission of any offence. It merely recounts the recovery of a dead deer and two dead rabbits, along with guns, cartridges etc. The FIR does not even remotely disclose the commission of any offence by any of the individuals named in the FIR. No specific or distinct role is attributed to any one of them. The Petitioners' liberty cannot be compromised on the basis of such a cryptic and vague FIR. The entire object of the police is to harass and humiliate the Petitioners and to coerce them into suffering self-incriminating statements, u/s 57 of the Act.

10. It is further argued that in the absence of any legal evidence or any bullet injury to the deer, allegedly recovered by the police officials, the Petitioners cannot be held responsible and arrayed as accused.

11. In so far as the order, passed by the Additional Sessions Judge, Jhajjar, counsel for the Petitioner contends that the Court lost sight of the fact that the Special Court at Faridabad is headed by a Chief Judicial Magistrate, who is not empowered to entertain an application for grant of anticipatory bail and, therefore, the said Court, failed to exercise jurisdiction, u/s 438 Code of Criminal Procedure

12. The last point, urged by the learned Counsel for the Petitioners, is that the FIR has been lodged by a person not authorised to do so. The police has no jurisdiction to investigate any matter under the Act and/or issue notices, u/s 160 Code of Criminal Procedure The authority to register a case and/or investigate the matter vests with the Director or the Chief Wildlife Warden and not with the police, consequently, the entire investigation stands vitiated.

13. Counsel for the State, on the other hand, contends that the Petitioners were caught red handed, while in the possession of the carcass of a schedule-I animal, namely, a black buck, hunting of which is prohibited, u/s 9 of the Act. The Petitioners were found in possession of a freshly killed black buck and were, therefore, guilty of violating the provisions of Sections 9 and 39 of the Act. It is further argued that the Petitioners have failed to respond to the summons, issued u/s 160 of the Code of Criminal Procedure Till such time, as the Petitioners are interrogated in custody, it would be impossible to unravel the truth, in view of the nature of the offence and the facts pertaining to the commission of the offence, being within their special knowledge. The Petitioners are duty bound to cooperate with the police, aid in the investigation so as to enable the police to arrive at the truth, but in fact, have made every attempt to thwart and delay the investigation so as to prevent the prosecution from arriving at the truth. Their custodial interrogation, which is qualitatively different from the interrogation of a person armed with the protection of an order of anticipatory bail, is necessary. It is further argued that in case, the Petitioners are admitted to the concession of anticipatory bail, they would not cooperate with the police, would make every attempt to influence witnesses and in all likelihood tamper with evidence and subvert the process of law. The Petitioners, being influential persons, would be in a position to interfere with the course of trial and, thus, should not be granted the concession of anticipatory bail.

14. During the course of hearing, five Crl. Misc. Applications, namely, Crl. Misc. Nos. 32705 of 2005 in Crl. Misc. No. 32398-M of 2005, Crl. Misc. No. 32707 of 2005 in Crl. Misc. No. 32505-M of 2005, Crl. Misc. No. 32538 of 2005, Crl. Misc. No. 32398-M of 2005 in Crl. Misc. No. 32557 of 2005 in Crl. Misc. No. 32505-M of 2005 and Crl. Misc. No. 32808 of 2005 in Crl. Misc. No. 32505-M of 2005 were filed on behalf of the Wildlife Trust of India through its Sr. Advisor and Trustee Ashok Kumar, the People for Animals, Haryana (Society for Prevention of Cruelty to Animals, Haryana) through its President Shri Naresh Kadyan, and the All India Bishnoi Mahasabha (Regd.), through its Spokesperson Darshan Singh, respectively, praying that they be impleaded as parties.

15. Counsel for the applicants have been permitted to intervene and have been heard.

16. Counsel for the interveners, apart from supporting the State, in seeking dismissal of the present petitions, contend that the bona fides of the State itself are in doubt. The mode and manner of investigation point to complicity or gross negligence on the part of the police. It is vehemently contended that once the DDR stood registered, the police were required to arrest the Petitioners and produce them before a Magistrate. By permitting the Petitioners and their co-accused to leave the police station, the police attempted to sabotage the investigation. This single act is sufficient to conclude complicity of the police. The fact that the matter was not referred to the Director or the Chief Wildlife Warden and the police sought

to investigate the matter on their own, is a further indication of the lack of the bona fides on the part of the police. The failure of the police to arrest any of the accused, except Madan Singh, also renders suspicious the manner in which the case is being investigated.

17. I have heard the learned Counsel for the parties, perused the pleadings, as also the original record, produced by the Respondent-State.

18. A brief narrative of the historical prospective of protection to animals, as also the statutory enactments would be appropriate.

19. Protection to wild life is not a modern-day concept. The first known Indian edict prohibiting killing of animals was promulgated by King Ashoka. These engraved edicts prohibiting the slaughter of animals have survived the vagaries of time. The legal status of wild life has travelled a long distance from the Anglo Saxson principle of "ferae naturae" i.e. a wild animal is the property of a person in whose forest it happens to be for the time being. The aforementioned jurisprudential definition of proprietary rights qua animals was apparently justified so long as man and animal faced each other on an equal footing. The introduction of the gun with its deadly variations and technical innovations overwhelming tilted the balance in favour of man and stacked the odds against the animal. Thus, arose the need to grant some degree of statutory protection to wild animals. It also dawned upon man that survival of wild animals was vital for ecological balance, maintenance of bio-diversity and for the ultimate survival of the human race. This realisation led to the enactment of various laws in this country, which eventually culminated in the Wild Life Protection Act, 1972.

20. The Wild Life (Protection) Act, 1972 was enacted with the object of providing protection to wild animals, birds and plants, and for matters connected therewith or ancillary or incidental thereto. Section 2(1) defines "animal", Section 2(16) defines "hunting". Section 9 of the Act prohibits any person from hunting any wild animal specified in Schedules I, II, III and IV except as provided under Sections 11 and 12 of the Act. Section 39 of the Act provides that every wild animal, other than the exceptions, referred to in the section, animal article, meat derived from any wild animal in respect of which an offence against the Act or any rule or order has been committed, shall be the property of the State Government, and where such animal is hunted in a sanctuary or a National Park, shall be the property of the Central Government. Sub-section (3)(b) of Section 39 further mandates that no person shall, without the previous permission in writing of the Chief Wildlife Warden or the authorised officer, destroy or damage such government property. Chapter VI of the Act deals with the power of entry, search, arrest and detention. Sub-section (1) thereof empowers the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of Sub Inspector, if he has reasonable grounds for believing that a person has committed an offence against the Act, to direct such

person to produce, for inspection, the items, enumerated in the clauses or conduct a search and seize any animal, meat etc. Such person can be arrested unless the officer concerned is satisfied that such person would appear and answer to any charge, which may be levelled against him. Sub-section (8) of Section 50 of the Act, further confers powers upon the Assistant Director, Wild Life Preservation or the Wild Life Warden to make any investigation into any offence against any provision of the Act and for that purpose, has powers to issue search warrants, enforce the attendance of witness, record evidence etc. Section 51 of the Act enumerates penalties for offences under the Act. Section 57 of the Act raises a presumption of guilt vis-a-vis the possession, custody or control of any captive animal, animal article, meat etc. and burden to rebut such presumption lies with the person found to have committed an offence against the Act.

21. Article 48-A of the Constitution of India requires the State to make every endeavour to protect and improve the environment and to safeguard forests and the wild life of the country. Similarly, Article 51-A(g), enumerates a fundamental duty of a citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Protection to wild animals finds a place in the directive principles of State policy, as also in the fundamental duties, enumerates in the Constitution of India.

22. The Petitioners have approached this Court praying for grant of anticipatory bail, and as has already been noticed, primarily on the grounds that as they were already detained and released by the police, in the exercise of powers, u/s 50 of the Act, they cannot be re-arrested. No recoveries are to be effected from them. The site of the alleged offences stands identified, the tyre marks of the vehicles have already been lifted, the statements of Madan Singh, co-accused, cannot be read against the Petitioners, the FIR does not suggest the commission of any offence by any of the Petitioners, named therein, no specific or distinct role has been attributed to the Petitioners, no legal evidence exists that would warrant the Petitioners' implication and finally that the FIR has been lodged by a person not authorised by law to lodge such a report.

23. While considering a plea for anticipatory bail, the correctness or otherwise of the allegations depending upon the circumstances of each case, are, in my opinion, to a large extent irrelevant. The Court, while considering a plea for anticipatory bail, examines the prayer, by taking into consideration the nature of the alleged offence, the seriousness/gravity thereof, the context of the events, the likelihood of the accused absconding, and/or interfering with the process of investigation, offering inducements to the witnesses etc. The grant or denial of anticipatory bail, in my opinion, is in no manner connected to the guilt or innocence of the Petitioner and is confined to the consideration of the facts obtaining in the context of law applicable. The parameters within which a plea for anticipatory bail has to be examined, has been set down in [Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab](#), . The

Court is, thus, required to examine the bona fides of the Petitioners in the context of the allegations levelled against them and on the basis of the principles, enunciated in the aforementioned judgment.

24. The contention of counsel for the Petitioner that the FIR has been lodged by an authority not authorised to do so, would, in my opinion, be a matter not germane to the issue at hand. Whether the FIR has been lodged, in terms of the provisions of the Act or otherwise, would fall for consideration, during the course of the trial or such other proceedings that the Petitioner may choose to initiate. However, Section 50(1) of the Act does not confine the power of investigation, search, seizure and arrest to the Director of Wild Life Preservation or the Chief Wild Life Warden. Sub-section (1) of Section 50 of the Act confers such powers upon a police officer not below the rank of Sub Inspector. The provisions of Section 50(8) of the Act, which empower the Assistant Director of Wild Life Preservation or the Wild Life Warden to investigate an offence under the Act, cannot be read to oust the powers, conferred u/s 50(1) of the Act. Thus, the scheme of the Act, in my opinion, appears to confer jurisdiction on the Director of Wild Life Preservation, Wild Life Warden or a Police Officer not below the rank of Sub Inspector to enter or search and/or arrest and detain any individual suspected of having committed an offence under the Act. The reliance upon Section 55 of the Act to canvass that arrest and investigation falls within the exclusive domain of the Director or the Chief Wildlife Warden, is in my opinion misplaced. Sections 50 and 55 of the Act operate in separate domains. Section 50 is confined to entry, search, arrest, detention and investigation, whereas Section 55 deals with the filing of the complaint, the filing of which falls within the exclusive domain of the Director of Wildlife Preservation or any officer authorised in this behalf by the Central Government or the Chief Wildlife Warden or any other officer authorised in this behalf by the State Government or any person who has given notice of not less than 60 days in the manner prescribed.

25. The next contention, raised by counsel for the Petitioner that no specific role has been attributed to any individual, in my opinion, does not advance the Petitioner's case. The FIR is a report setting out the commission of an offence. It need not necessarily detail each and every fact of the alleged offence, more-so in the facts and circumstances of the present case, when the ingredients of offence are within the special knowledge of the accused. The police or the first informant could not be expected to set down, in the FIR, all the particulars of the offence.

26. The next contention, raised by learned Counsel for the Petitioners, that as they were detained and then let off by the police, they cannot be re-arrested, in my opinion, does not merit acceptance. A perusal of the vernacular version of the FIR reveals that the Petitioners were let off with the words which, when translated, read "subject to orders in future". The Petitioners were, thus let off, subject to their presence being required in future. This act by the police was in consonance with the provisions of Section 50(1)(c) of the Act, which empowers an officer, acting under the

Act, to permit a person accused of an offence under the Act, to leave, provided such officer is satisfied that such person would appear and answer any charge, which may be preferred against him. The police was apparently satisfied that the Petitioners would appear and answer any charges that would be levelled against them. A perusal of the record shows that before leaving, the Petitioners, as also the other co-accused, affixed their signatures in column No. 2 of the Daily Diary Register. Thus, the Petitioners cannot be permitted to argue that the police cannot now issue a notice u/s 160 of the Code of Criminal Procedure and/or take them into custody.

27. The argument that the statements of Madan Singh, being that of a co-accused, cannot be used against the Petitioners, would be a circumstance to be taken into consideration at the stage of the trial. The evidentiary value of Madan Singh's statements, implicating the Petitioners, would be a matter open to the Petitioners to agitate as and when the said statements are sought to be used against them. The Petitioners have apparently lost sight of the provisions of Section 57 of the Act, which raise a presumption that a person, in possession, custody or control of any animal article, meat etc., shall be presumed, to be in unlawful possession thereof, until the contrary is proved the burden of proving which, lies upon the accused. Section 57 of the Act, thus, raises a presumption against the Petitioners, which they would be required to rebut, during the course of trial, even if the statements of Madan Singh are not taken into consideration.

28. The next contention, namely, the absence of legal evidence, is a matter that cannot be raised at this stage, as investigation is still in progress and has, infact, been stalled by the uncooperative attitude of the Petitioners.

29. In so far as the pleas, that all recoveries have been effected, the articles used in the killing of the black buck are in the possession of the police, the scene of the crime has been visited, photographs taken and, therefore, there is no requirement for custodial interrogation, in my opinion, do not help the Petitioners.

30. Learned Counsel appearing for the State has categorically asserted that custodial interrogation of the Petitioners is necessary so as to conclusively identify the place of occurrence, the particulars of the act of hunting, the specific acts, committed by each of the co-accused. The necessity of custodial interrogation has been vehemently canvassed by the learned Counsel for the State on the plea that in a case of hunting by night, no witnesses are likely to be present. It is only from the attending circumstances and the statements, if any, suffered by the accused, that the prosecution would be able to arrive at a truthful account of the incidents that led to the killing of the black buck. The above contention may not, by itself, be sufficient to decline the concession of anticipatory bail but when considered in the light of the gravity of the offence, this Court cannot but arrive at a conclusion that the Petitioners are not entitled to the concession of anticipatory bail.

31. Taking the life of a defenceless animal, on the verge of extinction, hunting of which is specifically prohibited, by Section 9 read with Schedule I of the Act, renders the act, committed by the Petitioners, so grave and heinous as to dissuade me extending the discretionary benefit of anticipatory bail to them. The Petitioners belong to that strata of society which is generally in the fore-front of public causes like preservation of the environment, prevention of cruelty to animals, protection to animals etc. The Petitioners, by virtue of their status, must have been aware, of the consequences of hunting a schedule-I animal. To hold otherwise, would be shutting one's eyes to the realities that pervade society. Status in society inhere certain duties, which the Petitioners blinded by their desire to hunt and poach, disregarded. The "Black Buck" is an endangered species of antelope, native to the Indian Sub-Continent, extinct in Pakistan and on the verge of extinction in India. To hunt and kill such an animal, in my opinion, places the alleged offence within the category of a grave and heinous crime, which disentitles the Petitioners to the discretionary relief of anticipatory bail.

32. I am also of the considered opinion, and as has been canvassed by learned Counsel for the interveners, that in case the Petitioners are granted the concession of anticipatory bail, they would not only subvert the process of law but also interfere with the prosecution. The ease with which the Petitioners have been able to evade arrest, coupled with the gravity of the offence and the facts, referred to above, dis-entitle them to the concession of anticipatory bail. Even otherwise, no special circumstances have been made out to warrant the exercise of the discretionary powers, contained in Section 438 of the Code of Criminal Procedure in favour of the present Petitioners.

33. In view of what has been stated above, the present petitions for grant of anticipatory bail to the Petitioners are dismissed.

34. Nothing, stated herein, shall be construed as an expression of opinion on the merits of the case.

Petitions dismissed.