

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLICATION NO. 1858/2010**

Reserved on : 14.12.2010

Decided on : 15.12.2010

IN THE MATTER OF :

HARPAL SINGH

..... Petitioner

Through: Mr.Sidharth Luthra, Sr.Advocate
with Mr.Pawanjit Singh Bindra and
Mr.Ashish Dixit, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr. Navin Sharma, APP
with Inspector Dharamvir Singh, PS SP Badli

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J.

1. The present petition is filed by the petitioner under Section 438 Cr.PC for grant of anticipatory bail in FIR No.815/2006 lodged under Section 302 IPC registered with PS SP Badli.

2. The basis of the FIR is DD 24-A which was registered on 26.9.2006, at PS SP Badli recording that a murder had taken place near Haryana Glass House, Swarup Nagar. The said DD was handed over to the IO who reached the spot and found there, a dead body of a sikh gentleman, later on identified as Parminder Singh. The said body bore deep injuries on it and nearby lay one pistol in a cocked position, three live cartridges and

one iron hammer. The informant, one Sh.Gurdeep Singh was present at the site. He confessed his crime before the police and stated that he had a quarrel with the deceased, Parminder Singh and during the quarrel he gave a number of blows on his face and head which resulted in his death. After the aforesaid FIR was lodged, investigation was started. In the course of the investigation, it was revealed that on 8.7.2006, the wife of the accused, Smt.Parvinder Kaur had left with her children for Punjab on 8.7.2006 and did not return. She was constantly in touch with the deceased on mobile phone and personally. Investigations further revealed that the accused was last seen with the deceased and the call details of four mobile phones of both accused and the deceased corroborated the same.

3. The charge sheet mentioned that during the course of investigation, it was revealed that the deceased had got a GPA from Smt.Gurdial Kaur and her family to fight the case against her brother, Baba Gurdial Singh(father of the petitioner), with regard to his purported illegal possession of her share of property from out of the estate of her deceased brother, Sant Gurmail Singh relating to Gurudwara Hargobindsar, GT Karnal Road, Delhi. It was found that the accused was actively helping the deceased who filed several complaints in various police stations on behalf of Smt.Gurdial Kaur against Baba Gurdial Singh, father of the petitioner herein, and got one criminal case registered against him at PS Adarsh Nagar being FIR No.488/2006. After the investigations were completed, a charge sheet was filed on 4.1.2007. Thereafter, the testimony of the prosecution witnesses were being recorded. During the pendency of the aforesaid proceedings, in May 2010, the prosecution filed an application under Section

319 Cr.PC requesting the trial court to proceed against the petitioner and his father on the basis of the deposition of Parvinder Kaur, wife of the accused(PW-17) that had come on record. Vide order dated 30.9.2010, the aforesaid application was allowed and the petitioner and his father were summoned under Sections 302/120B IPC. Thereafter, an application filed by them for exemption from personal appearance was dismissed vide order dated 23.10.2010 and non-bailable warrants were issued against them. It may be noted that the petitioner and his father have sought quashing of the aforesaid orders in Crl.M.C. No.3743/2010, on which notice was issued vide order dated 2.12.2010. Prior to filing the present petition, the petitioner approached the Sessions Court for grant of anticipatory bail, which was rejected vide order dated 16.11.2010. Hence the present petition for grant of anticipatory bail.

4. Counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case solely on the basis of the testimony of the wife of the accused, Smt.Parvinder Kaur(PW-17), which is patently false and unreliable. He submitted that the deceased was the former driver of the petitioner's father and used to live in Gurudwara Hargobindsar earlier, but had left the same in the year 2004. He further stated that Smt.Parvinder Kaur also worked with the father of the petitioner in the said Gurudwara as a *sewadar* upto the year 2004, but thereafter, neither she nor the deceased came to the said Gurudwara. It is the case of the petitioner that Smt.Parvinder Kaur was estranged from her husband and while all the three were living under the same roof, she had developed intimacy with the deceased, which was objected to by the accused who finally murdered him

and confessed to committing the crime in his disclosure statement. He stated that Smt.Parvinder Kaur deserted the accused on 8.7.2006 and immediately thereafter, she filed a divorce petition against him. He drew the attention of this Court to the statement of Smt.Parvinder Kaur, recorded under Section 161 Cr.PC, and marked as Ex.P-13, to point out that there is not a whisper in the said statement against the petitioner or his father. It was further canvassed by the counsel for the petitioner that the complaint addressed by Smt.Parvinder Kaur, PW-17 to various authorities three months after the date of the incident, was nothing but a part of a conspiracy to involve the petitioner in a false case and though the said complaint was all along within the knowledge of the prosecution, no effort was made by it to carry out any investigations, till as recently as in May 2010, and then also the application filed under Section 319 Cr.P.C. was solely on the basis of the testimony of Smt. Parvinder Kaur (PW-17), who, it is contended, has set up an entirely different story than the one she had originally, narrated to implicate the petitioner and his father.

5. As far as the antecedents of the petitioner is concerned, counsel for the petitioner submitted that the petitioner is a NRI based in Canada who has clean antecedents, that he has never been involved any criminal case and he has deep roots in the society. His family comprises of his father, wife and two children. He is a CEO of an educational institution based in Canada which is providing training for unique identification projects to the Government of India. It is submitted that the petitioner has always been available to the police for interrogation, in the past four years and if he is granted anticipatory bail, he shall not leave the country without the prior

permission of the court and he is ready and willing to join the investigation and co-operate with the IO as and when required. In support of the submission that the petitioner is entitled to grant of anticipatory bail in the present case, counsel for the petitioner has placed reliance on the following judgments of the Supreme Court:

(i) Joginder Kumar Vs. State of UP and others, (1994) 4 SCC 260

(ii) Bharat Chaudhary and another Vs. State of Bihar and another AIR 2003 SC 4662

(iii) Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others (Criminal Appeal No.2271/2010) decided on 2.12.2010.

6. On the other hand, learned APP for the State has vehemently opposed the present petition and submitted that the petitioner does not deserve any relief and in view of the fact that the case is pending before the Sessions Court, he ought to have approached the said Court by filing an application under Section 439 Cr.PC. He, however, confirmed the fact as per the record of local police station PS Badni, District Moga, Punjab, there is no previous involvement of the petitioner. He stated that it was during the course of recording of the evidence of Smt. Parvinder Kaur, PW-17 that allegations regarding the involvement of the petitioner and his father emerged, which made the prosecution file the application under Section 319 Cr.PC before the Sessions Court for summoning the petitioner and his father, primarily on the basis of the evidence in the form of the testimony of PW-17. A reference was made to the deposition of Smt.Parvinder Kaur, wife of the accused, recorded on 21.4.2010 to the effect that the father of the petitioner, his wife, and children had threatened her that they would

eliminate the deceased in her house and nobody could stop them from going ahead with the land deal in respect of the Gurudwara, with a realtor by the name of Ansals. The deposition of Sardar Jagmohan Singh (PW-3), son of Smt.Gurdial Kaur, aunt of the petitioner was also pointed out to contend that the said witness had deposed that the father of the petitioner had illegally taken possession of Gurudwara Hargobindsar at Nangli Poona, along with its assets, properties, bank accounts and vehicles and that his mother, Smt.Gurdial Kaur had executed a power of attorney in favour of the deceased, authorizing him to contest the case on her behalf in Delhi against the father of the petitioner who resides in Canada. It was therefore urged by the prosecution that the petitioner and his father had hatched a conspiracy to eliminate the deceased, as he was meddling in their affairs and preventing them from disposing off the land of the Gurudwara.

7. In so far as the testimony of Smt. Gurdial Kaur, aunt of the petitioner(PW-5) as recorded on 11.8.2009 is concerned, learned APP submitted that the said witness deposed that the deceased Parminder Singh had negotiated with her husband and her son and had persuaded them to file a number of complaints against Baba Gurdial Singh for getting her share in the estate of her deceased brother, Sant Gurmail Singh. She, however, stated that she was never extended threats regarding the dispute with her brother and she had not stated anything to the police about any suspicion regarding the murder of the deceased. She also stated that an amicable settlement was arrived at between her and Sh.Gurdial Singh, in the course of the proceedings in FIR No.488/2006. In her cross-examination, the aforesaid witness denied that any threats were extended to her by the

petitioner or his father from Canada. In support of his submission that the petitioner is not entitled to grant of anticipatory bail, learned APP for the State relied on the following judgments:-

(i) Gurbaksh Singh Sibbia Vs. State of Punjab **(1980) 3 SCR 383**

(ii) State rep.by the CBI Vs. Anil Sharma **1997 (3) Crimes 252 (SC)**

(iii) Adri Dharan Das Vs. State of W.B. **(2005) 4 SCC 303**

8. This Court has heard the counsels for the parties and carefully considered their respective submissions. Coming first to the objection raised by the learned APP for the State that as the case is pending before the Sessions Court, the petitioner should have approached the said court by filing an application under Section 439 Cr.PC, it is well settled that in appropriate cases, this Court is not prevented from granting anticipatory bail to a party merely because cognizance on a complaint has been taken and the investigating agency has filed a charge sheet. As observed by the Supreme Court in the case of Bharat Chaudhary(supra) , there is no restriction imposed in Section 438 Cr.PC in regard to exercise of the power to grant an anticipatory bail in suitable cases either by the court of Sessions, High Court or the Supreme Court even when cognizance is taken or charge sheet filed, as the object of the aforesaid provision is to prevent undue harassment of the accused person by pre-trial arrest and detention. The approach that powers under Section 438 Cr.PC being extraordinary in character should be exercised only in exceptional cases, has been held to be contrary to the legislative intention by the Constitution Bench in Sibbia's

case (supra) . Hence reliance placed by the learned APP for the State in the case of Adri Dharan Das(supra) would not be of any assistance to the prosecution.

9. As far as the scope of Section 438 Cr.PC is concerned, it is trite that grant or refusal to grant anticipatory bail depends on the facts and circumstances of each case and one case cannot be similar to the other. Thus courts have not been in favour of laying down a formula of universal application when facts are bound to differ from one case to the other. In a recent exhaustive decision of the Supreme Court in the case of Siddharam Satlingappa Mhetre(supra), the law relating to grant of anticipatory bail has been expounded and apart from discussing its historical perspective, the authoritative pronouncements of the Supreme Court on the aforesaid provision have been highlighted in the context of the right to life and personal liberty under the Constitution. Reference was also made to the observation made by the Constitution Bench in Sibbia's case(supra) that Section 438 Cr.PC is extraordinary because it was incorporated in the Cr.PC, 1973 and before that the other provisions for grant of bail were Sections 437 and 439 and not because it should be invoked in exceptional or rare cases. Holding that the courts of smaller strength had erroneously observed on earlier occasions that powers under Section 438 should be invoked only in exceptional or rare cases, the Supreme Court held that such an approach is contrary to the law laid down in Sibbia's case (supra). It was emphasized that courts considering a bail application should try to maintain a fine balance between societal interest vis-à-vis personal liberty, while adhering to the fundamental principle of criminal jurisprudence that the accused is

presumed to be innocent till he is found guilty by the competent court. It was observed that while exercising its extraordinary powers under Section 438 Cr.PC, the Court ought to be mindful of the following considerations: -

“96. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

97. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

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99. As aptly observed in ***Sibbia's case*** (supra) that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

100. The Constitution Bench in the same judgment also observed that a person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

10. Coming to the facts of the present case, it is an undisputed position that the FIR in question was registered four years ago, in September 2006. After the investigation was completed, a charge sheet was

filed on 4.1.2007 whereafter the trial has been going on and the evidence of the prosecution witnesses was being recorded. The occasion for the prosecution to file an application under Section 319 Cr.PC for summoning the petitioner and his father is primarily arose in view of the testimony of PW-17 as recorded in April, 2010. The fact that the petitioner and his father have filed a petition challenging the summoning order dated 30.9.2010 passed by the Sessions Court, which is the subject matter of consideration in CrI.MC No.3743/2010, need not detain this Court, as the scope of the aforesaid petition is entirely different and no benefit can be claimed by the petitioner merely because notice was issued on the said petition on 2.12.2010.

11. A perusal of the statement of Smt.Parvinder Kaur, PW-17 as recorded under Section 161 Cr.PC, bears out the submission of the counsel for the petitioner that no allegations were levelled by her against the petitioner. Rather, she had levelled allegations against the accused to the effect that he used to beat her up and her children and that she left her matrimonial home on 8.7.2006, never to return. She specifically stated that on the date of the incident, i.e., on 26.9.2006, she had received a call from the deceased who informed her that the accused was calling him to his house. Though she advised the deceased not to meet the accused, he still went to the house of the accused and on the next day, she came to know that the accused had murdered the deceased. She attributed money to be a motive for the murder. Pertinently, a copy of the complaint made by PW-17 to various authorities, for the arrest of the accused after lapse of about three months from the date of the incident, was duly received by the police

authorities. In the said complaint, PW-17 mentioned having received threats from the petitioner and his father. She also mentioned that her husband had told her that the father of the petitioner could kill her.

12. Despite the aforesaid evidence being available to the prosecution for about four years, the lead was not followed up in the course of the investigation and instead, the prosecution filed the charge sheet against the accused alone. Now for the prosecution to oppose the anticipatory bail application of the petitioner solely on the strength of the testimony of PW-17 as recorded on 21.4.2010, is unacceptable. Learned counsel for the petitioner stated that if a bird's eye view of the testimony of PW-17, is taken, it shows that she has been quite inconsistent. He pointed out that at one place, PW-17 had stated that the deceased and she were threatened by the petitioner and his family members and that the IO was told of the said facts, but he pressurized her and placed a proposal before her of receiving Rs.16,000/- to Rs.17,000/- per month from Gurudwara Management so as to remain silent. She also stated that she had complained about the pressurization on the part of the IO, Nagin Kaushik, to the senior officers in Delhi Police and that she could produce the complaints so lodged. However on 30.4.2010, in her cross-examination, PW-17 denied having lodged any complaint when she and the deceased had received threats. She also admitted that she did not state anything against the aforesaid IO in her complaint(Ex.PW-17/A). It was canvassed by the petitioner's counsel that similarly, in her examination-in-chief, PW-17 mentioned that the petitioner and his father were proposing to enter into negotiations in respect of the land of the Gurudwara with a realtor, but in

her cross-examination, she admitted that she had no documents in her possession to establish the said fact. Nor did she produce a copy of the injunction order, purportedly restraining the petitioner from selling the land to the realtor. On 7.12.2010, the State was directed to verify the status with regard to the alleged transaction entered into by the petitioner and his father for the sale of the land of the Gurudwara with the realtor, but there is no mention made in the status report in this regard. On a query, learned APP for the State had conceded that the prosecution had not been able to verify the factum of such a transaction.

13. Just as the petitioner cannot take advantage of issuance of notice in CrI.M.C.3743/2010, similarly, issuance of summons upon the petitioner, pursuant to the order dated 30.9.2010, cannot be a ground to decline anticipatory bail to him. As noted earlier, the incident is of September 2006, and charge sheet was filed in January 2007. Trial of the case has been going on ever since. As of now, except for the testimony of PW-17, recorded in April 2010, there is no other evidence placed on the record by the prosecution to connect the petitioner with the crime. The deposition of PW-17 recorded in Court, is the sole piece of evidence available with the prosecution for summoning him under Sections 302/120B IPC. Pertinently, the said witness did not level any allegation against the petitioner in her statement recorded under Section 161 Cr.PC. There is nothing brought on the record by the prosecution to establish that the petitioner entered into a collaboration with a realtor, to dispose of the land of the Gurudwara as alleged by PW-17. The profile of the petitioner reveals that there is no pending case against him. Considering the antecedents of

the petitioner, it does not appear that he shall flee from justice or is likely to abscond or misuse the liberty, if anticipatory bail is granted to him. It is not disputed by the prosecution that the petitioner has been available for all these years for interrogation and he has not made any attempt to evade interrogation. The testimony of the material witnesses has already been recorded.

14. In the aforesaid facts and circumstances, the present petition is allowed. It is directed that in the event of arrest, the petitioner shall be released on bail, subject to his furnishing a personal bond in the sum of ₹50,000/- with one local surety in the like amount, to the satisfaction of the investigating officer/arresting officer. It is directed that the petitioner shall fully co-operate in the investigation and will not create any hindrance or impediment during the course of investigation. It is further directed that the petitioner shall not approach any of the witnesses or try to visit the area where they reside, nor shall he seek to influence the investigation in any manner. Further, as volunteered by him, the petitioner shall not travel overseas without the prior permission of the trial court.

15. Needless to state that the observations made hereinabove are limited to the scope of grant of anticipatory bail to the petitioner and shall not be treated as a reflection on the merits of the case.

16. The petition is disposed of.

DASTI.

DECEMBER 15, 2010
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(HIMA KOHLI)
JUDGE