

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-8689 of 2015 (O & M)
Date of Decision:-27.04.2015**

Rajesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Anmol Malik, Deputy A.G., Haryana.

Mr. Akashdeep Singh, Advocate
for the complainant.

HARI PAL VERMA J.

Prayer in this petition is for grant of anticipatory bail to the petitioner namely, Rajesh Kumar son of Ishwar Singh resident of Village Subana, Police Station Salhawas, Tehsil & District Jhajjar in FIR No.185 dated 21.10.2014, under Sections 148, 149, 341, 307, 302 and 506 IPC and Section 25/54/59 of the Arms Act, registered at Police Station Salhawas City, District Jhajjar.

On 26.3.2015, this Court while issuing notice of motion has

passed the following order :-

“Learned counsel for the petitioner contends that there is no attribution of any injury on the part of the petitioner and rather the petitioner has not been indicted by the DSP in its report dated 29.11.2014.

Notice of motion for 23.4.2015.”

Reiterating the aforesaid contention, Ms. Puja Chopra, learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, so as to settle the scores and wreak vengeance, as the petitioner is a parental uncle of co-accused Raman, who inturn was friend of the accused. She further states that the petitioner has no direct or indirect relation with the alleged incident and the allegation of fire-arm injury is attributed to one Amit. Amit son of Khajan Singh is stated to have fired the shot below the chest of Vijaypal. Even the allegations of fire-arm injuries on Sandeep is attributed to said Amit. Learned counsel for the petitioner also submits that the alleged occurrence took place at 8.30 A.M., whereas the FIR was registered at 7.50 PM on 21.10.2014 and on the relevant date and time the petitioner was in his school.

Learned counsel for the petitioner has relied upon ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** 2011(1) SCC (Cri) 514 to contends that though no straight jacket formula is provided for the grant or denial of the anticipatory bail, but there are still certain factors and parameters, which need to be taken into consideration while dealing with anticipatory bail. While considering the anticipatory bail, the Court must evaluate the entire available material against the

accused. The relevant extract of the Siddharam's judgment (supra) is as under :-

“121. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood

to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Learned counsel for the petitioner has further argued that there is enough material to suggest that the petitioner has falsely been implicated in the case. The petitioner, who is working as lecturer and posted in Govt. Senior Secondary School, Kasni, was present in the school at the time of alleged occurrence. In support of this contention she has annexed an extract of attendance register followed by certificate from the Principal that the petitioner remained in the school upto 2.40 in the afternoon on 21.10.2014. Similar joint statement of the staff has also been filed as Annexure P-2 to contend that the petitioner remained in the school during the morning prayer and whole of the day. She has further submitted that the Deputy Superintendent of Police has enquired into the matter and has submitted the inquiry report dated 3.11.2014 that the petitioner along with other persons was not found present at the place of occurrence or has taken part therein. She has seriously contended the plea of *alibi*.

Mr. Akashdeep Singh, learned counsel for the complainant has argued that even if there is no specific attribution of any injury to the petitioner, he was still a member of unlawful assembly and is therefore equally liable in view of Section 149 of IPC and the Court should consider such participation with greater care and caution. Learned counsel for the complainant while relying upon ***Jai Prakash Singh vs. State of Bihar and another*** 2012(1) AIR (SC) 1676 contended that the petitioner has specifically been named in the FIR and the Court has to consider whether there is apprehension of tampering of the witnesses or apprehension of

threat to the complainant in case the petitioner is admitted to anticipatory bail, therefore, anticipatory bail cannot be granted as a matter of right. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases.

Learned State counsel has submitted that the petitioner and the other co-accused have caused death of Vijaypal and have caused injuries to Sandeep. Therefore, the petitioner is not entitled the concession of anticipatory bail. He contends that the allegation against the petitioner are serious as he with his co-accused including Amit son of Khajan Singh, who is stated to have fired shots, has committed heinous crime.

Learned State counsel has also argued that since the case is at the investigation stage and the petitioner has been specifically named in the FIR, grant of anticipatory bail to him at this stage would hamper the very investigation.

I have heard learned counsel for the parties at good length.

Having perused the contents of the FIR, it is noticed that the petitioner though has been named in the FIR but only his presence has been recorded. No injury has been attributed to the petitioner. Further, the petitioner has placed on record enough material to substantiate that at the time of occurrence the petitioner was not at the place of occurrence, rather he being a lecturer remained present in his school. The Principal and the staff members have furnished statements to the effect that the present petitioner was present in the school at the time of occurrence in the morning hours.

Considering the fact that there is no injury attributed to the petitioner, it would be unjust to decline the anticipatory bail to the petitioner.

Accordingly, the present petition is allowed and the petitioner is admitted to interim bail to the satisfaction of the Arresting Officer. It is made clear that the petitioner shall join the investigation and co-operate with the investigating agency as and when required to do so and shall abide by all the conditions laid down under Section 438(2) Cr.P.C.

The expression made herein shall not be construed as an observation in the case and shall not prejudice the investigation or trial in any manner.

April 27, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE