

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

**CRM-M No.42287 of 2016 (O&M)
Date of decision : 28.11.2016**

Ajaypal

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. B.S.Baath, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

This is a petition for grant of anticipatory bail to the petitioner under Section 438 Cr.P.C. in case FIR No.73, dated 09.10.2016 registered under Sections 302/34 IPC at Police Station Sekhwan, District Batala.

As per the allegation the mother of the complainant was staying in the house of his brother who had gone abroad to Dubai with her daughter-in-law and two grand daughters. It seems the daughter-in-law developed illicit relations with the petitioner and one Raju. On 07.10.2016 the old lady died and when the complainant reached the house he was informed that she had died of natural causes. Since he had no reason to disbelieve his sister-in-law's statement the body was cremated. However some of the women who gave the last ritual bath informed him that there were injury marks and strangulation marks on the body and photographs of the same had also been taken on somebody's mobile phone. Then the

complainant got suspicious and when he made inquiry his niece told him that infact the old lady had been murdered and that was when the complainant lodged the instant FIR.

Learned counsel has argued that in the FIR no overt act has been attributed to the petitioner. The learned Sessions Judge noticed that the grand daughter of the old lady had given an eye witness account as per which the grand mother had been killed by her mother and her paramours including the petitioner. The fact that no overt act was attributed to the petitioner can not lead to the conclusion that the petitioner is innocent or was not present at the spot.

The Supreme Court in the matter of “Adri Dharan Das vs. State of West Bengal Appeal (Crl.) 326 of 2005” decided on 21.02.2005 and “D.K.Ganesh Babu vs. P.T. Manokaran and others Appeal(Crl.) 249 of 2007” decided on 23.02.2007, held as follows:

“Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed

arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. The Court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

Further, the Supreme Court in the matter of “**Sudhir vs. State of Maharashtra and another 2015 (4) RCR(Cr.)649**” held as follows:

“Having considered the submissions made by learned counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same.”

Further, the Supreme Court in the matter of “**Maruti Nivrutti Navale vs. State of Maharashtra and another, 2013(3) R.C.R. (Criminal) 235**” held as follows:-

“12) As observed above, all the three counsel appearing for the parties took us through MoUs, lease

deed and other correspondence /communications with the Educational Authorities as well as the report of the Deputy Collector, Pune, to Senior Police Inspector, Bundgarden Police Station, Pune. It is also relevant to point out that all these materials were scrutinized/analyzed by the Additional Sessions Judge, Pune and the High Court while considering the application for anticipatory bail. It is true that the parties have also approached the Civil Court for various reliefs. At the same time, as pointed out by counsel for the State and the second respondent-Complainant, considering the seriousness relating to corrections/additions/ alterations made in various documents, information furnished to the Educational Authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the appellant and the allegation against him that he has made false representation before the Public Authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary. For this reason, the Additional Sessions Judge and the High Court rejected the claim for anticipatory bail.

Further, the Supreme Court in the matter of “***Bhadresh Bipinbhai Sheth vs. State of Gujarat and another, 2015 AIR (SC) 3090***” wherein some principles have been culled out for the purposes of granting anticipatory bail which are as under:-

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail 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 the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial

interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to 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.

(iv) There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. 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.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail

granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

- (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (b) 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;*
- (c) The possibility of the applicant to flee from justice;*
- (d) The possibility of the accused's likelihood to repeat similar or other offences;*
- (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*
- (h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (i) The Court should consider reasonable*

*apprehension of tampering of the witness or apprehension of threat to the complainant;
(j) 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 not been able to cite any contrary judgment.

In the circumstances, at this stage, it is difficult to take a different view as taken by the Additional Sessions Judge.

In the circumstances, the petition stands dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

28.11.2016
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No