

Crl. Misc. No. M-10493 of 2018

(1)

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

Crl. Misc. No. M-10493 of 2018

DATE OF DECISION:10.05.2018

Vivek Jindal

.....Petitioner

Versus

State of Punjab

.....Respondent

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Sourabh Goel, Advocate  
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Haryana.

Mr. Amit Kumar Goyal, Advocate  
for the complainant.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to petitioner-Vivek Jindal in case FIR No. 43 dated 30.1.2018 registered under Sections 353,186,427,506 and 34 IPC at Police Station City Barnala.

Learned counsel for the petitioner contends that as per allegations in the FIR, the petitioner was driving the motorcycle and while co-accused who was as sitting pillion rider caused damage to the car of the complainant. The FIR has been registered due to the influence of the bank officials and without even appreciating the fact that in fact the recovery agents sent by the bank were trying to take forcible possession of the Hotel despite there being stay of alienation by the trial Court in a civil suit filed by aunt of the petitioner. Learned counsel further contends that a false story

to hand over the keys of the Hotel to the bank. Learned counsel also contends that no injury was caused to the bank officials and only damage was to the car of the officials. Even there is no allegation in the FIR that injury was caused to the persons who were sitting in the car. No recovery is to be effected from the petitioner and custodial interrogation is not required. At the end, learned counsel for the petitioner contends that offence under Sections 186, 427 and 506 IPC are bailable and there is no ingredient of Section 353 IPC in the FIR. The cognizance of offence under Sections 186, 353 IPC cannot be taken except by moving a written complaint.

Learned counsel for the respondent-State has opposed the submissions made by learned counsel for the petitioner and submits that intention of the petitioner was clear as he followed the bank officials and damaged the car, whereas, the bank officials went there to perform their officials duties and to paste the notices only. Learned State counsel contends that the petitioner was driving the motorcycle, whereas, the co-accused, who was sitting as pillion rider hit the window pane of the car. Learned State counsel also contends that the car was damaged from back as well as from front side and the petitioner does not deserve the concession of bail.

Learned counsel for the complainant has also opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner not only caused damage to the car but caused injury to the occupants of the car. The act and conduct of the petitioner was willful and as he not only prevented the bank officials to perform their official duties but intimidated them and caused loss to the car.

Heard the arguments advanced by learned counsel for the

parties and have also gone through the contents of the FIR and other documents available on the file.

The FIR was registered on the statement of Mahesh Chander, who was working as Chief Manager in Punjab National Bank, Bathinda. As per allegations in the FIR, he along with his staff members went to take symbolic possession from the defaulter of the bank and for fixing the notices of the bank. While returning back, the petitioner along with co-accused, who were on motorcycle armed with iron rod had broken the window pane of the car, which is clear from the photographs shown in the Court at the time of hearing of the case. On reaching the police, which was called by the occupants of the car, the accused fled away from the spot. Not only the damage was caused to the car but any untoward incident could have happened as one of the accused was holding iron rod in his hand and other was driving motorcycle. It is also clear from the photograph that the bank officials were there to paste the notices and were discharging their official duty.

For grant of anticipatory bail, the nature, gravity of offence as well as role of the accused is to be seen. There are certain factors, which are to be considered while granting bail under Section 438 Cr.P.C. Hon'ble the Apex Court in a judgment rendered in **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another** 2015 (8) JT 125 has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated 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 overimplication 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.

In view of the facts as mentioned above and the allegations levelled in the FIR, the petitioner does not deserve the concession of anticipatory bail as serious allegations are there against him. Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

May 10, 2018  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
Yes