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

CRM-M-50035 of 2017

Date of decision: January 01, 2018

Sabar Khan

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vipul Joshi, Advocate for
Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab.

Mr. L.S. Mann, Advocate
for the complainant.

SUDHIR MITTAL, J (Oral)

Service is complete.

Parties have been heard.

The petitioner seeks grant of anticipatory bail in FIR No.124 dated 02.09.2017, registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib, filed under Sections 323, 325, 326, 452, 506, 148 & 149 of the Indian Penal Code.

The petitioner is attributed three injuries to Davinder Singh S/o Kashmir Singh which have been declared to be simple in nature. The petitioner was arrested on 22.09.2017. His application for regular bail was declined vide order dated 23.10.2017 (Annexure P-7). Against that, **CRM-M-41225 of 2017** was filed in this Court which was allowed vide order dated 09.11.2017 (Annexure P-4).

Thereafter, vide special report dated 11.12.2017 (Annexure P-6), offence under Section 459 IPC was added on the basis of certain observations made by the trial Court while declining regular bail to the petitioner vide its order dated 23.10.2017 (Annexure P-7).

Hence, the present petition seeking grant of anticipatory bail.

It is contended by learned counsel for the petitioner that the offence under Section 459 IPC is not made out against the petitioner as no grievous injury is attributed to him and also because the offence of house breaking is not made out. It is also submitted that the prosecution was not entitled to include any other offence after the charge sheet had been filed (in this case the charge sheet was filed on 17.11.2017).

On the other hand, learned State counsel has submitted that the petitioner is accused of a serious offence for which the maximum punishment is life imprisonment and therefore, the petitioner is not entitled to concession of anticipatory bail.

Learned counsel for the complainant has vehemently argued in support of the State counsel. It is his contention that there is no restriction imposed by the Code of Criminal Procedure upon the Investigating Agency to include an additional offence after submission of the charge sheet. He also submits that Section 459 IPC is attracted in this case because offence under Section 445 IPC and Section 460 IPC prescribes that all persons jointly concerned in lurking house trespass or house breaking by night are punishable in case death or grievous hurt is caused by one of them. He submits that Kashmir Singh-father of the complainant has suffered grievous injuries. Apart from that, two ladies in the house and the maternal uncle of the complainant has also suffered injuries. Thus, his submission is that a

very serious offence has been added and therefore, the petitioner is not entitled to the concession of anticipatory bail.

Having considered the rival submissions of the parties and without commenting upon the merits of the controversy i.e. whether Section 459 IPC is attracted in this case or not, I deem it appropriate to grant concession of anticipatory bail to the petitioner for the reason that he has already remained in custody for a period of one and a half months and was released on regular bail by this Court after taking into consideration all the circumstances of this case. Merely, because another offence has been added on the basis of certain observations made by the trial Court on an earlier occasion, the petitioner would not be dis-entitled to grant of anticipatory bail. Challan has already been presented and there is no likelihood of the petitioner interfering or hampering the trial.

Thus, in the event of arrest of the petitioner, he shall be released on bail to the satisfaction of learned trial Court/Duty Magistrate. The petitioner is directed to comply with conditions envisaged under Section 438(2) Cr.P.C. and in case, the complainant or the Investigating Agency is of the view that the concession of anticipatory bail has been mis-used by the petitioner, they would be at liberty to seek its cancellation.

Petition is disposed of.

(SUDHIR MITTAL)
JUDGE

January 01, 2018
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Whether speaking/ reasoned: Yes
Whether Reportable: No