

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

**Criminal Misc. No. M-9086 of 2019
Date of decision: 13.03.2019**

Balwinder Singh @ Doctor and another **..Petitioners**

Versus

State of Punjab **..Respondent**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. C.S. Rana, Advocate
for the petitioners.

Ms. Bhavna Gupta, DAG, Punjab
for the respondent -State.

Mr. Dhawal Bhandari, Advocate
for the complainant.

Daya Chaudhary, J.

Petitioners, namely, Balwinder Singh @ Doctor and Jagjit Singh @ Jagga, approached this Court by way of filing the present petition under Section 438 Cr.P.C. for grant of anticipatory bail to them in case FIR No.29 dated 29.05.2018 registered under Section 302 read with Section 34 IPC at Police Station Amir Khas, District Fazilka. The petitioners have been summoned as an additional accused to face trial by the Additional Sessions Judge, Fazilka vide order dated 07.02.2019.

At the time of first hearing on 28.02.2019, this petition qua petitioner No.2-Jagjit Singh @ Jagga, who was minor, was dismissed as withdrawn with liberty avail the appropriate remedy. Meaning thereby, now the present petition survives qua petitioner No.1-Balwinder Singh @ Doctor only.

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Learned counsel for petitioner No.1 submits that petitioner No.1 was found innocent during investigation and was kept in column No.2 of the final report filed under Section 173(2) Cr.P.C. The challan was filed against co-accused Baljit Singh. Learned counsel further submits that no offence is made out against petitioner No.1 and there was no evidence to connect him with commission of offence. As per allegations levelled in the FIR, petitioner No.1-Balwinder Singh @ Doctor caught hold of the complainant. In the detailed inquiry conducted by SHO, Police Station Amir Khas and on perusal of footage of CCTV camera installed at the shop, it was found that the petitioner was not involved. Statement of owner of the shop, namely, Rakesh Kumar, was recorded by the Police under Section 161 Cr.P.C. regarding the incident as the incident occurred in front of his shop. Said Rakesh Kumar was present at the time of occurrence. In the statement, neither petitioner No.1 was named nor any role has been assigned to him. After detailed investigation, petitioner No.1 was found innocent. Learned counsel also submits that on the basis of same set of allegations, petitioner No.1 has been summoned whereas he was neither present at the place of occurrence nor came in the car. He has been implicated due to previous enmity. While summoning under Section 319 Cr.P.C., there was no material evidence with the prosecution to summon petitioner No.1 still he has been summoned. Petitioner No.1 is ready to join the Court proceedings and to abide by all terms and conditions to be imposed by this Court or by the trial Court. Learned counsel for petitioner No.1 has also relied upon judgment rendered by this Court in ***Bajinder Singh and another vs. State of Punjab, 2015(3) RCR (Criminal) 950*** in support of his contentions.

Learned State counsel has not disputed the factum of declaring petitioner No.1 innocent and subsequently, summoning as an additional accused after recording statement of complainant. However, learned State counsel has opposed grant of anticipatory bail to petitioner No.1 on the ground of seriousness of the offence.

Learned counsel for complainant has opposed grant of anticipatory bail to petitioner No.1 on the ground that not only specific allegations of involvement are there but a well reasoned order of summoning has also been passed and petitioner No.1 is at par with other accused, who are already facing trial. He was wrongly declared innocent. Learned counsel further submits that the place of occurrence was bus stand where CCTV camera was installed, which was also checked.

Heard arguments of learned counsel for parties and have also perused the contents of the FIR and other documents available on the file.

Admittedly, earlier petitioner No.1 was found innocent and has been summoned subsequently as an additional accused.

Now the question arises in the present petition as to whether petitioner No.1 is entitled for concession of anticipatory bail while he has been summoned as an additional accused. The jurisdiction provided under Section 438 Cr.P.C. has to be exercised with care and caution. In case, an accused has a reason to believe that he would be arrested in a non-bailable offence, he would be entitled to invoke the provisions of Section 438 Cr.P.C. However, no hard and fast rule can be laid down for exercising such power. It depends upon the facts and circumstances of each case.

In the present case, petitioner No.1 was found innocent during

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investigation and has been summoned subsequently as an additional accused to face trial for offence punishable under Section 302 IPC. Petitioner No.1 has a reasonable apprehension that he would be taken into custody.

The plea of anticipatory bail is not misconceived. Article 21 of the Constitution of India guarantees the right to life and liberty to its citizens. Criminal law derives its source and substance from the Constitution. All these laws are supplementary and incidental to the principles laid down in the constitution as has been held in para Nos.13 and 14 of judgment of Hon'ble the Apex Court in ***Vikas vs. State of Rajasthan, 2013(4) RCR (Criminal) 948***. Thus such additional accused, who does not intend to defy law and is ready to face trial, his plea for anticipatory bail can be considered subject to the principles laid down in ***Gurbaksh Singh Sibbia etc. vs. The State of Punjab, 1980 AIR (SC) 1632***.

Undisputedly, it has been held in various judgments of this Court as well as Hon'ble the Apex Court that the Court is fully empowered to summon additional accused in exercise of its power under Section 193 Cr.P.C. It need not necessarily wait till the trial reaches the stage of Section 319 Cr.P.C.

Thus, it can be summarized that the accused, who has been summoned as an additional accused, does not intend to defy law and is ready to face trial, his plea for anticipatory bail can be considered subject to the principles laid down in ***Gurbaksh Singh Sibbia's case (supra)***.

Accordingly, the present petition is allowed and petitioner No.1-Balwinder Singh @ Doctor is directed to appear/surrender before the trial Court within a period of one week from the date of receipt of certified

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copy of this order and in case, he appears/surrenders before the trial Court within the stipulated period, he shall be released on interim bail on his furnishing bail/surety bonds to the satisfaction of the trial Court subject to the conditions as envisaged under Section 438(2) Cr.P.C.

13.03.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No