

Sr. No.103

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

CRM-M-28114-2019

Date of decision:05.07.2019

Amanjot Singh

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed seeking anticipatory bail under Section 438 Cr.P.C in FIR No.36, dated 01.06.2019 registered under Sections 302, 201, 34 IPC at Police Station City Banga, District SAS Nagar.

FIR in this case had come on the statement of the Complainant Sucha Ram, the father of the alleged deceased saying that on 28.04.2015 his son Harjit Kumar had gone to College at Jalandhar for taking his degree certificate. However, he did not return till evening. At about 5:00 PM he repeatedly called on his mobile phone but it was responding as switched off. Therefore, DDR was got recorded on 29.04.2015. At that time, complainant was not sure of the involvement of any person. However, later on he came to know from his sources that it is present petitioner Amanjot Singh, one Monika Rani and one Parminer Kaur who killed his son. Subsequently, the daughter-in-law of the complainant got a call from one Jarnail Singh saying that he had found mobile of the alleged deceased lying abandoned in the fields and he wanted to return it. Accordingly, the mobile phone of the alleged deceased was found. In the said mobile phone, the contacts of the

petitioner and his other two alleged accomplices were found present. It is further alleged in the FIR that above-said Monika Rani was having a love affair with the alleged deceased son of the complainant earlier, however, subsequently, she had developed affair with the present petitioner. Therefore, they both had conspired to eliminate the son of the complainant and accordingly, they have killed his son and destroyed the body of the alleged deceased.

While arguing the case, learned counsel for the petitioner has submitted that police have already inquired into the case twice and the petitioner has not been found to be involved in the case. Even the Status Report was filed by the DSP in this regard before this Court in another connected case.

However, this Court does not find sufficient merit in the argument of learned counsel for the petitioner. It is not even in dispute that the son of the Complainant, had gone missing and he is alleged to have been killed. The only persons, whose contact with the alleged deceased has surfaced so far, immediately before the missing of the son of the complainant, is the petitioner and his two alleged accomplices. Therefore, the matter deserves to be investigated thoroughly from the point of view of the involvement of the present petitioner and his accomplices in the case.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special

and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country, and qua some offences under special statutes; it is not available in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

Although, the counsel for the petitioner has submitted that in this case, the police have already inquired into the matter twice and not found any involvement of the petitioner, however, this Court finds that earlier also the complainant had to file CRM-M-26821-2015 before this Court because the Police were not even registering the case in this matter. Hence, mere assertion of the Police in earlier petition, in reply filed to another petition, is totally irrelevant; because the FIR in the question had come into being only pursuant to the order passed in the above-said CRM-M-26821-2015 filed by the complainant. Otherwise also, the facts, as alleged in the complaint had indicated the involvement of the petitioner. The allegations *per se*, do indicate towards alleged involvement of the petitioner along-with his co-accomplices and this aspect deserves to be investigated. Therefore, this Court does not find any mitigating circumstances, suggesting ex facie innocence on the part of the petitioner, qua the allegations levelled against him. Hence, this Court does not find it to be an appropriate case to exercise its powers under Section 438 Cr.P.C so as to grant concession of anticipatory bail to the petitioner. More over, the

facts of the case would suggest that, if at all there is crime in this case, it could be within the specific knowledge of the petitioner. Therefore, grant of any protection to the petitioner would hamper even the free and fair investigation of the case.

In view of the above, finding no merits in the present petition, the same is dismissed.

5th July, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*