

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRM-M-33413 of 2019

Date of decision:4.10.2019

Nikhil

... Petitioner

versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Saurabh Dalal, Advocate,
for the petitioner
Mr.Neeraj Poswal, AAG, Haryana
...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks the concession of anticipatory bail upon an offence punishable under Section 307 of the IPC having been added in the FIR, the FIR having originally been recorded on 17.6.2019, alleging therein the commission of offences punishable under Sections 323 and 506 of the IPC, read with Section 34 thereof.

The background of the matter is that after some incident took place on 8.5.2019, qua which the petitioner is also seen to be named in the FIR, with the allegation being that he slapped the complainant once, thereafter it was further stated by the complainant that when he was at his shop on 19.5.2019, one Onu came to him, with whom he went to the Saini Dharamshala, where Monty, Mintu and Nikhil, i.e. the petitioner, were present, with Monty having scuffled with the complainant, after which he called "Vikas and his friends and they also beat him and a CR college boy threatened him that they will abduct him." Thereafter the accused are stated

to have left the spot.

The complainant thereafter went to the PGIMS, Rohtak, with a complaint of a pain in his abdomen in the night of 30.5.2019. It was recorded in the MLR that there was an alleged history of a physical assault on 19.5.2019, with the Surgeons' opinion sought, after which it was found that there was a perforation in his stomach, which was opined to be dangerous to life, upon which the offence punishable under Section 307 of the IPC was added in the FIR.

As regards the offences punishable under Sections 323/506 read with Section 34 of the IPC, the petitioner and the other co-accused had already been admitted to bail earlier by the learned trial Court itself.

Thereafter, the petitioner and his other co-accused, i.e. Rohit @ Monty, first approached the trial Court by filing a similar petition invoking its jurisdiction under Section 438 of the Cr.P.C., which was dismissed by that Court on 7.8.2019, holding in its order that even though no recovery was to be effected from the petitioners at that stage, considering the serious nature of the offences, no ground for the grant of anticipatory bail was made out.

Before this Court, yesterday learned counsel for the petitioner has produced a copy of a judgment of the Supreme Court in Pradeep Ram vs. State of Jharkhand and another, 2019(3) RCR (Criminal) 538, from which he now points to the following conclusion reached by their Lordships:-

“29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after

grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under [Section 437\(5\)](#) or 439(2) of [Cr.P.C.](#), 1973 for arrest of the accused and his custody.

(iii) The Court, in exercise of power under [Section 437 \(5\)](#) or 439(2) of [Cr.P.C.](#), 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under [Section 437\(5\)](#) as well as [Section 439\(2\)](#) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

His contention therefore is that with the petitioner earlier

having been admitted to bail and he now having been sought to be arrested upon an offence punishable under Section 307 of the IPC having been added, with the complainant admittedly having approached the hospital as regards any pain in his abdomen only on 30.5.2019, i.e. 11 days after the alleged occurrence, and in fact with no medico legal case also having been made at that stage but only on the next day, thereafter; and further, with him not having been specifically named as one of those who actually beat up the complainant (those named being Monty and Vikas), he deserves that the bail already granted to him not be cancelled, and in fact the learned Sessions Judge should have allowed his petition filed under Section 438 of the Cr.P.C.

Mr.Poswal, learned AAG, Haryana, on the other hand submits that the petitioner having been named as one of those who beat up the complainant, the wording used in the FIR being that Monty, Vikas and his friends had also beaten up the complainant, and this Court having already dismissed the petitions of Rohit @ Monty and Vikas on 27.8.2019, the petitioner cannot be treated differently.

Having considered the matter, though learned counsel for the petitioner definitely has made out a point as regards the ratio of the judgment in Pradeep Rams' case (supra), however, considering the fact that what has been stated in the FIR is to the effect that Monty and Vikas and his friends beat up the complainant, even considering the fact that the perforation was stated to have been discovered only 11 to 12 days after the alleged occurrence, with the petition filed by the aforesaid two accused, i.e.

Rohit @ Monty and Vikas, already having been dismissed by this Court, I

see no reason to entertain this petition.

In the context of when jurisdiction under Section 438 of the Cr.P.C., should be invoked, it would be useful to quote from the judgment of the Supreme Court in **Gurbaksh Singh Sibbia v. The State of Punjab**, (1980) 2 SCC 565, wherein their Lordships held as follows:-

“...That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant’s presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and “the larger interests of the public or the State” are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.”

(Emphasis applied in the present judgment)

Thus, in my opinion, the allegation against the petitioner being that he along with his co-accused together beat up the complainant, with that having led to a perforation in an organ in his abdomen, even though the said perforation was discovered only later and learned counsel for the petitioner has vehemently argued that it may not have been due to any beating at all, I find myself unable to agree with that contention, for the reason that no other cause of perforation has been shown to this court by way of any medical record produced to that effect either by the petitioner or by the State.

Hence, in my opinion, granting anticipatory bail to a person who even prima facie is shown to be involved in such an offence, is not in public interest, the message eventually going out to the society being that anybody can beat up any other person and not face any consequences till the matter has been decided by the trial court, which obviously may take a very long time.

Consequently, this petition is dismissed.

However, nothing stated hereinafore shall be treated to be a comment on the actual merits of the case for or against the petitioner, but only in the context of a petition seeking anticipatory bail.

In the event of the arrest of the petitioner and him moving a petition under the provisions of Section 439 of the Cr.P.C., naturally that would be dealt with wholly on its own merits, and expeditiously, by the trial Court.

4.10.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes