

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 217

Date of Decision: *October 29, 2019*
Criminal Miscellaneous No.M-41912 of 2019

Arshdeep Singh & another

..... PETITIONER(S)

VERSUS

State of Punjab

..... RESPONDENT(S)

...

Criminal Miscellaneous No.M-41756 of 2019

Tarun Chopra

..... PETITIONER(S)

VERSUS

State of Punjab

..... RESPONDENT(S)

...

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

...

PRESENT: - Mr. Ankur Mittal, Advocate, for the petitioner(s).

Mr. B.S. Sewak, Additional Advocate General, Punjab.

Mr. Dilraj Singh, Advocate, for the complainant.

. . .

Amol Rattan Singh, J (Oral)

CRM-M-41912-2019

By this petition, the petitioners seek the concession of anticipatory bail after an offence punishable under Section 307 of the IPC was added to the list of offences already alleged to have been committed in the FIR registered on 13.05.2019, such offences being those punishable

under Sections 323, 341, 325, 506, 148, 149 of the IPC, as also under Section 25/27 of the Arms Act, 1959.

Earlier, infact, the same offence (punishable under Section 307 of the IPC) had been included in the FIR but it was subsequently deleted on the recommendation of the Deputy Superintendent of Police, with the Superintendent of Police (City), thereafter having opined that looking at the nature of the assault, the offence punishable under the said provision should be reinserted in the FIR.

Learned counsel for the petitioners submits that once the petitioners had been admitted to anticipatory bail by the learned Additional Sessions Judge, after the offence punishable under Section 307 of the IPC was deleted from the FIR, there would be no reason to deny them the same concession just because the said offence has been reinserted in the FIR, with there otherwise being no change in the situation at all, as regards the nature of injuries stated to have been received by those injured in the occurrence.

He also relies upon two orders of the Supreme Court, in Manoj Suresh Jadhav and others vs. The State of Maharashtra, 2018(5) RCR (Criminal) 397 and in Uday Chand vs. Sheikh Mohd. Abdullah, Chief Minister, J&K, (1983) 2 SCC 417, to submit that once a person had been admitted to bail, simply because another offence is added to the FIR, there would be no reason for the police to arrest such a person again.

He also relies upon judgments of coordinate Benches of the Madras High Court and Rajasthan High Court to the similar effect.

Learned counsel for the complainant on the other hand relies upon a judgment of the Supreme Court in Pradeep Ram vs. State of

Jharkhand & another, 2019(3) RCR (Criminal) 538 (Law Finder DocId # 1526592), from which he points to paragraph 27, which reads as follows:-

“27. Relying on the above said order, learned counsel for the appellant submits that respondent State ought to get first the order dated 10.03.2016 granting bail to appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the Court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the Court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The power under Sections 437(5) and 439(2) are wide powers granted to the court by the Legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier

offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the Court after cancelling the earlier bail.”

Learned counsel for the State submits that 18 injuries having been caused by the petitioners and their accomplices to three persons, they in any case did not deserve the concession of anticipatory bail in the first place, whether or not any such injuries had been declared dangerous to life (with the counsel for the petitioners reiterating that no injury has been declared to be dangerous to life).

Having considered the matter, it is first to be noticed that this Court had already declined anticipatory bail to a co-accused of the present petitioners, i.e. one Harpal Singh who had filed CRM-M-37553 of 2019, with that petition having been dismissed on 06.09.2019.

That apart, it is to be specifically observed that grant of anticipatory bail in terms of provisions of Section 438 of the Cr.P.C., is a concession to be granted by a court in rare circumstances where it is of the opinion that non-grant of such a concession would amount to mis-carriage of justice. Hence, discretion to grant such bail or not has been left to the court concerned, even in terms of the judgment of the Constitution Bench in Gurbakhsh Singh Sibbia & others vs. State of Punjab, AIR 1980 SC 1632.

Coming to the orders of the Supreme Court relied upon by learned counsel for the petitioners in the cases of Jadhav and Uday Chand (both supra), it is seen that in both cases the petitioners therein had been actually arrested by the police after a more serious offence was added in the

FIR, other than the offences originally alleged to have been committed therein.

In that context, it was held, in Jadhavs' case, that it was not permissible for the State to simply rearrest the petitioners by ignoring the orders passed by the Additional Sessions Judge (granting them bail).

Similarly, in Uday Chands' case, in similar circumstances, it was held that where the Supreme Court itself had granted bail to an accused, it was the bounden duty of the State to apprise the Court before arresting such an accused, upon some other offences alleged to have been committed by him even prior to the order granting him bail.

No such circumstance exists in the present case, because the petitioners have not been rearrested by the State and are in fact seeking the concession of pre-arrest bail upon Section 307 of the IPC having been re-added in the FIR, as an offence allegedly committed. In fact, it would be appropriate to again refer to the judgment cited by learned counsel for the complainant in Pardeep Ram's case (supra), wherein their Lordships have held as follows:-

“..... It may be true that by mere addition of an offence in a criminal case, in which accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the Court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the Court after applying the mind may either refuse the bail or grant the bail with regard to new offences.”

Of course, thereafter it has also been held by the Supreme Court that in case a bail application of an accused for newly added offences is rejected, the accused can be arrested, and further, that when new offences are added including offences of serious nature, it is not necessary that in all cases bail should be cancelled by the Court before granting permission to arrest an accused (on the basis of the offences newly added).

Thus, in a nutshell, what had been held by their Lordships is that once bail has been granted, the investigating agency cannot rearrest an accused upon addition of new offences without seeking permission of the Court as had granted the bail but, naturally, there is no bar on the Court in reconsidering its order (granting such bail), if it is of the opinion that in view of the new offences added, an accused does not deserve such bail.

In the present case, obviously, the nature of injuries inflicted on the complainant (as per his case) has not changed by the re-addition of the offence punishable under Section 307 of the IPC. However, in my opinion, even looking at the number of injuries inflicted by the petitioners and their co-accused collectively, they should not have been admitted to anticipatory bail in the first place, even with no offence punishable under Section 307 of the IPC added.

However, interim anticipatory bail having been granted by the learned Additional Sessions Judge before the offence punishable under Section 307 of the IPC was reinserted, in the circumstances, I see no infirmity in such order not having been confirmed after the offence was reinserted. Thus, I would see no reason to admit them to anticipatory bail.

Naturally, in case the petitioners are arrested and thereafter seek the concession of bail in terms of the provisions of Section 439 of the

Cr.P.C., such application, considering the stage when it is moved, would be decided wholly on its own merits.

In view of the above, considering that the petitioners and the co-accused are alleged to have inflicted 18 injuries on three persons, with no injury having been sustained by the petitioner, in that occurrence atleast, I see absolutely no reason to grant them the concession of anticipatory bail, with learned counsel for the complainant and the State also further submitting that even identities of the other co-accused are still to be established.

Consequently, without making any comment on the actual merits of the case for or against the petitioners, with it is to be also noticed that learned counsel for the petitioners submits that the occurrence took place after one Manpreet Singh, brother of another co-accused (Harpal Singh), had received injuries at the hands of some of those on the “side of the complainant” in another occurrence earlier on the same day, I do not see enough reason even on that count to admit the petitioners to anticipatory bail.

However, it is made clear that all observations made herein above are only in the context of whether or not the petitioners can be admitted to anticipatory bail, with the investigation and trial (if it comes to that stage) to be naturally governed wholly on the basis of the evidence gathered/led.

Consequently, this petition is dismissed.

CRM-M-41756-2019

As regards the petitioner in this petition, i.e. Tarun Chopra, though obviously the allegations against him are the same as against other

co-accused whose petition has been dismissed here-in-above, it is not denied that he has already suffered custody of 2 ½ months, after which he was admitted to bail in terms of Section 438 of the Cr.P.C.

That being so, in my opinion, his case is different to that of the petitioners in CRM-M-41912 of 2019 decided herein above, because in that case, the petitioners, despite serious allegations against them had not undergone even one days' imprisonment.

The petitioner in this case (Tarun Chopra) is seeking anticipatory bail (after re-insertion of S. 307 as an offence), upon him earlier having been admitted to bail on an application filed by him under the provisions of Section 439 of the Cr.P.C., on 21.08.2019.

Consequently, upon the petitioner joining investigation, in case he is sought to be arrested, he would be admitted to interim bail, till the next date of hearing in this petition, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaqa Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 25.11.2019.

A copy of this order be placed in the connected case.

October 29, 2019

avin

Whether Speaking/ Reasoned:

Whether Reportable:

(Amol Rattan Singh)
Judge

Yes/ No

Yes/ No