

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

CRM-M-3627 of 2020 (O&M)
Date of Decision: January 31, 2020

Atul Soni

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG Punjab.

Mr. S.P.S. Khaira, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. The instant petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.05 dated 19.01.2020, registered under Sections 307, 323, 498-A of Indian Penal Code and Section 25 of Arms Act at Police Station Phase-8, District SAS Nagar Mohali.
2. Counsel for the petitioner contends that the petitioner herein has been involved in the present false case by twisting the fact whereas, no

such complaint was made by the wife of the petitioner. It is submitted that there was an altercation between husband and wife and due to that complainant-respondent No.2 reported the matter to the police wherein, no such allegation of firing of shot was alleged and in this regard, complainant-respondent No.2 already executed an affidavit. It is argued that the petitioner never maltreated or harassed his wife on account of demand of dowry. It is also contended that as per the investigating agency, weapon has already been recovered, as such, custodial interrogation of the petitioner would not be required. Counsel for the petitioner also relies upon the affidavit of the complainant (Annexure P-2) wherein, she has stated that she only signed the complaint and had not written it nor it was read over to her before signing and by using the said complaint, the instant false FIR has been registered. Counsel for the petitioner also submits that in the said affidavit, the complainant has categorically stated that due to some misunderstanding between her and her husband, an altercation took place and in order to get the matter sorted out, her daughter called the police help line number. It is also argued that the petitioner is ready to join the investigation and cooperate.

3. Status report filed by the respondent-State by way of affidavit of Mr. Ramandeep Singh, PPS, DSP City-II, SAS Nagar along with its annexures is taken on record and copies thereof have been handed over to the opposite counsel.

4. Counsel appearing on behalf of the respondent-State would argue that during the course of investigation, the Investigating Officer along with police party as well as complainant and her daughter visited and

inspected the spot i.e. Flat No.243, United Cooperative Society, Sector 68, Mohali and inspected from where, she recovered an empty cartridge and a pellet from the drawing room of the said flat and took into possession the same. It is submitted that the complainant produced a pistol .32 bore and a magazine along with one live cartridge, which was having No.1011 AUTO PISTOL, only USA Supply on one side of barrel of pistol and made in USA on the second side of the pistol, however, the same is a country made weapon and not the service weapon of the petitioner.

5. Learned State counsel has also shown CCTV footage of the altercation that took place at Satva, Sector 26, Chandigarh between the petitioner herein and his wife i.e. the complainant on the mobile phone of the Investigating Officer in the court wherein, it appears that the petitioner herein had shoved away his wife i.e. the complainant with force.

6. I have heard counsel for the parties and with their able assistance, have through the pleadings of the case and the status report filed.

7. Section 438 of Code of Criminal Procedure contains the provisions for grant of anticipatory bail and the following factors and parameters can be taken into consideration while dealing with the anticipatory bail:-

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Section 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

8. A perusal of the said status report would reflect that while LSI Amandeep Kaur along with other police officials were on patrolling in the official vehicle and present near Army Law College, Sector 68, Mohali, the complainant Sunita Rani along with daughter Bhavya Soni met at around 2.00 p.m. and they moved a hand written complaint, duly signed by the complainant, which bears the mobile number of both the complainant as

well as her daughter. In the said complaint, the complainant has *inter alia* levelled allegations that she is being regularly tortured physically, emotionally and mentally by her husband, who is DSP in Punjab Police. On the date of the complaint, she was pushed so badly in Satva located at Sector 26, Chandigarh and it was a big humiliation for her and she has been insulted numerous times and felt embarrassed. The complainant has further stated in the complaint that on the date of the complaint, after coming home with her daughter and son, her husband followed them and came home and started beating her a lot. Her husband pulled out his gun and shot on her, but her son came in the middle and she was saved. She requested that she wanted strict steps to be taken by the police, since this fight could have taken a person life on the spot.

9. It is settled principle that the anticipatory bail cannot be granted as a matter of rule, it is being an extraordinary privilege, should be granted only in exceptional cases. After the registration of the FIR in the present case, though the complainant has furnished an affidavit denying the written complaint to the police, but there are serious allegations that have been levelled against the petitioner. Admittedly, the CCTV footage reflects that the petitioner shoved the complainant in a restaurant and the shove was not a gentle push. It was a violent shove/push. The complaint is handwritten and bears the signatures of the complainant. Moreover, there is a recovery of country made pistol from the flat of the petitioner (who is a DSP rank officer) along with empty cartridge and pellet and the source of the same is yet to be unearthed. Section 438 Cr.P.C. is an extraordinary remedy and after considering the material and facts of the present case, custodial

interrogation of the petitioner is certainly required by the police for a result oriented investigation.

10. In view of the above, the instant petition for grant of anticipatory bail is hereby dismissed.

January 31, 2020
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No