

Sr.No.259

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

**CRM-M-4931-2020(O&M)
Date of decision:07.02.2020**

Parminder Singh Bariana

... Petitioner(s)

versus

State of Punjab

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Damanbir Singh Sobti, Advocate
for the petitioner.

Mr. S.P.S.Tinna, Addl.AG, Punjab.

Mr. Dalbir Singh, DSP Vigilance

Ms. Kamaljeet Kaur, Deputy Director Education Department

Mr. Surinderpal Singh, Secretary, Vidhan Sabha

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed under Section 438 Cr.P.C for the grant of pre-arrest bail to the petitioner under apprehension of being arrested in one or the other false case on the basis of the Report submitted by the Privilege Committee of the Punjab Vidhan Sabha on 14.01.2019 (Annexure P-30) and it was thereafter, tabled on the Punjab Vidhan Sabha on 17.01.2019, which has been adopted by the Punjab Vidhan Sabha by way of Resolution on 17.01.2019 (Annexure P-31).

Notice of motion was issued in this case on 04.02.2020. Learned Additional Advocate General, Punjab had accepted notice on behalf of the State and sought time to address arguments after obtaining

specific instructions from the State.

On 06.02.2020 another opportunity was granted to the State and to file affidavit, if so desired.

Today State of Punjab has filed three affidavits. One by Shri Sarabjit Singh, PPS, Assistant Inspector General of Police, Litigation, Bureau of Investigation, Punjab, Chandigarh, Second affidavit is filed by Shri Paramjit Singh Goraya, PPS, Joint Director (Crime), Vigilance Bureau, Punjab and third by Shri Sukhjeet Pal Singh, Director of Public Instructions (SE), Punjab.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had been victimized by the ruling Government and the controversy in the present case started from phono conversation which was given to journalist in which reference was made to an earlier phono conversation with retired Director General of Police, Punjab. The alleged phono conversation is as follows:-

“You have raised this question about the Session of the Vidhan Sabha. If the Government was so serious about the issue, then where was the requirement and what is the authority they have to discuss the report.”

Learned counsel for the petitioner has submitted that on the basis of this, a MEMO was filed by one of the sitting MLAs of Punjab namely, Sardar Kuldeep Singh Zira. The contents of the same reproduced herein below:-

“Sardar Kuldeep Singh Zira, M.L.A has issued a notice of violation of privilege rights against Sh.Parminster Singh Bariana, Punjabi

Master, G.H.S. Nangal Ishar. In his notice, the member has alleged that he has used derogatory language against Vidhan Sabha (Pious House) and is doing journalism while working as a Government employee, which has caused the violation of privileged rights of the House as well as its Members. Hon'ble Speaker has entrusted this matter of examination, inquiry and for submitting the report to the Privileged Committee on 05.03.2019.

The complaint of the member is as under:-

“ I want to bring to your kind notice that Sh.Parminder Singh Bariana, Government Teacher is doing the journalism work for Dainik Bhaskar. Recently, he has used very derogatory language on various T.V.channels in respect of Justice Ranjit Singh Commission's report, submitted in the Vidhan Sabha and has also challenged the Vidhan Sabha that the Vidhan Sabha has the rights to discuss the report. This Government Teacher has no right to wrongly comment upon the Vidhan Sabha, which is a pious house. Whereas no Government employee can do the journalism work during the Government duty. He can only write the articles to make the people aware for good causes. Thus, the above Teacher

has used derogatory language against Vidhan Sabha (Pious House) and has insulted the House and its Members. This is a very serious matter. Thus, I request to take notice of the violations of privilege rights against this Government employee.”

On the basis of this MEMO, summons were issued to the petitioner vide Annexure P-16 by the Punjab Vidhan Sabha Secretariat. Thereafter, Privilege Committee was constituted for making an inquiry into the said MEMO which was filed by the said M.L.A. Thereafter, various proceedings of said Committee were commenced and the petitioner was also heard by the Privilege Committee. Apart from that, various officials of State Government were also heard by the Privilege Committee. Learned counsel for the petitioner has stated that although he was summoned but he was not properly heard by the Privilege Committee nor any documents were supplied to him. Thereafter, on the basis of the detailed inquiry which was conducted by the Privilege Committee, a Report was submitted to the Punjab Vidhan Sabha vide Annexure P-30. Privilege Committee made two recommendations vide Annexure P-30 which are reproduced herein below.:-

RECOMMENDATIONS

The Committee strongly recommends to take the following action against Parminder Singh Bariana, Punjabi Master, Government High School, Nangal Ishar, for having declared guilty of contempt of the Assembly, violation of its privilege rights, insult of the highest post of Hon'ble Speaker, violation of his privilege

*rights, insult of the Committee of the pious
Assembly and the violation of its privilege rights,
insult of the member and the violation of his
privilege rights:-*

- 1. Parminder Singh Bariana may be
dismissed from Government service with
immediate effect and all the financial
benefits given to him as a Government
employee be withheld with immediate
effect.*
- 2. Case be registered against him
through Vigilance/Criminal Procedure
Code (Cr.P.C) and action be taken
immediately.”*

Learned counsel for the petitioner further argues that first recommendation pertains to dismissal of the petitioner from the government service and the second recommendation which is the subject matter of the present case pertains to the recommendation that case be registered against him through Vigilance/Criminal Procedure Code (Cr.P.C) and action be taken immediately. Thereafter, vide Annexure P-31 the Punjab Vidhan Sabha vide item No.9 dated 17.01.2020 adopted the recommendations of the Privilege Committee. Learned counsel for the petitioner has submitted that since the recommendation of the Privilege Committee which has been adopted by the Punjab Vidhan Sabha has come to light, there is an apprehension that he will be booked in a false case pertaining to violation of privileges of the Vidhan Sabha and that he would be arrested by the Police. Therefore, he has filed the present petition for anticipatory bail. He has further stated that since he has

apprehension that he may be booked in any false case, at any place in the State of Punjab, therefore, he has chosen not to file bail application before any of the Sessions Division but has directly approached this Court because he was not sure as to where he would be booked. Learned counsel for the petitioner has relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court rendered in ***Sushila Aggarwal and others versus State (NCT of Delhi) and another***; to emphasis that a petition for an anticipatory bail would be maintainable even if an FIR has not been lodged in any case.

Per contra, Shri Surinder Pal Singh Tinna, learned Additional Advocate General, Punjab has drawn my attention to the affidavit which has been filed by the Assistant Inspector General of Police, Litigation, Bureau of Investigation, Punjab in which it has been stated that reference has been received by the Director General of Police, Punjab on 04.02.2020 and in the said communication the Department of School Education, Punjab has asked to take necessary legal action regarding tampering in the School record of Government High School, Nangal Isher, District Hoshiarpur. It has also been stated in the affidavit that upon consideration of the contents of the above said Memos dated 5.2.2020 and 13.12.2019, the same have been forwarded to the Senior Superintendent of Police, Hoshiarpur for taking necessary action as per law. Learned Additional Advocate General, Punjab states that so far as the office of the Inspector General of Punjab is concerned, the Memo has been received with regard to some over-writing in the dispatch register and there is nothing in the affidavit to state that with regard to the violation of the Vidhan Sabha privileges any action has yet been initiated. He has relied upon the operative part of the affidavit which is reproduced as below:-

*“That it is further humbly submitted that a
reference vide Memo No.10/57-19 - --3(1)/*

202047886 dated 5.2.2020 addressed to the Director General of Police, Punjab has been received from Director, Education Department, Punjab, in which reference is also made to an earlier letter Memo. NO. 10/57-19 ---3 (1) dated 13.12.2019 about overwriting on the dispatch register. A perusal of the records revealed that above referred Memo. NO. 10/57-19 --- 3(1)/2019424060 dated 13.12.2019 from the Secretary, Department of School Education, Punjab, addressed to the Director General of Police, Punjab, was received in this office only on 4.2.2020. In the said communications, the Department of School Education has asked to take necessary legal action regarding tampering in the School record of Government High School, Nangal Isher, District Hoshiarpur.

Upon consideration of the contents of the abovesaid Memos dated 5.2.2020 and 13.12.2019, the same have been forwarded to the Senior Superintendent of Police, Hoshiarpur for necessary action as per law.”

Thereafter, he has referred to the affidavit filed by Shri Paramjit Singh Goraya, PPS, Joint Director (Crime) Vigilance Bureau, Punjab in which it has been stated that so far as Report dated 14.01.2020 (Annexure P-30) and Resolution dated 17.01.2020 (Annexure P-31) passed by Privilege Committee of Punjab Vidhan Sabha are concerned, the same has been received on

06.02.2020 which is one day ago from the office of the Director, Education Department (Secondary Education) Punjab and which is pending for consideration in the office of Vigilance Bureau, Punjab and the decision be taken as per law in this regard. Relevant para of above stated affidavit is reproduced herein below:-

“That as far as report dated 14.01.2020 (Annexure P-30) and resolution dated 17.01.2020 (Annexure P-31) passed by the Privilege Committee of Punjab Vidhan Sabha are concerned, the same has been received on 06.02.2020 in the afternoon, from the office of Director, Education Department (Secondary Education) Punjab vide letter No. 4/96-15---3(1)/202049923 dated 06.02.2020, which is pending for consideration in office of Vigilance Bureau, Punjab and the decision will be taken as per law, in this regard.”

So far as the affidavit of the Department of Education is concerned, it has been stated in para No.7 of the affidavit that in pursuance of the resolution of the Punjab Vidhan Sabha and the report of the Privilege Committee thereof, the Department is in the process of issuing a Charge Sheet to the petitioner for the contempt of the Punjab Vidhan Sabha, breach of its privilege and affront to the office of the Speaker, the Privilege Committee, members and their privileges. Para No.7 of the aforesated affidavit is reproduced herein below:-

“That in pursuance of the resolution of the Punjab Vidhan Sabha and the report of the

Privilege Committee thereof, the Department is in the process of issuing a Charge sheet to the petitioner for the contempt of the Punjab Vidhan Sabha, Breach of its privilege and affront to the office of the Speaker, the Privilege Committee, members and their privileges.”

Learned Additional Advocate General, Punjab has further submitted that in the present case, the Police Department has not even received the recommendations of the Privilege Committee and where as the Vigilance Department is concerned, it has been stated in the affidavit that matter is still under consideration. Regarding the Department of Education, it is pertaining to some other subject matter and not for taking any criminal action. So far as fabrication of some document is concerned and Departmental action is to be taken with regard to the breach of privilege, still the Department of Education has not even taken departmental action.

Thereafter, the learned State counsel has prayed that the present petition is pre-mature and therefore, liable to be dismissed. Learned State counsel has also submitted that the present petition is misconceived because the petitioner has not been able to show as to what apprehension he has and there is no material to show that he has any reason so as to believe to fulfill the conditions contained under Section 438 (1) Cr.P.C.

I have heard the learned counsel for the parties. In the present case, admittedly, the process started with the remarks which have been reproduced above that allegedly the petitioner had raised some issues with regard to the authority of the Punjab Vidhan Sabha to discuss the report which was tabled before it. The said subject matter was considered by the Privilege Committee on the basis of a representation by one MLA of Punjab

and thereafter, it was recommended vide Annexure P-30 that a case be registered through Vigilance / Code of Criminal Procedure and action be taken immediately. So far as the Ist part of the recommendation Annexure P-30 is concerned, it is not the subject matter of the present case. It is only the IInd part which is the subject matter of the present case.

It was specifically submitted by the learned Additional Advocate General, Punjab that these recommendations were only recommendations and although they have been adopted by the Punjab Vidhan Sabha but as of now, no action has been taken either by the Police Department or by the Vigilance Department of the State of Punjab. He has further stated that if at all required, then action may be taken which would always be in accordance with law.

Learned counsel for the petitioner has vehemently argued that it is a case where he has reasonable apprehension of being arrested and therefore, he may be protected. So far as the IInd part of the Resolution is concerned, on being pointedly, asked from the learned counsel for the petitioner as to what would be the apprehension to him especially with regard to the reason to believe that under what provision of law he could be arrested or any FIR could be registered against him, he has not been able to answer the query and has drawn my attention to the petition which has been filed in this case wherein he has stated that the respondents are hell-bent to nab the petitioner in false case. I have gone through the petition which has been filed by the petitioner. The entire petition contains the entire background of the case which culminated ultimately into the recommendations which have been made by the Punjab Vidhan Sabha. However, in Para No.20 of the petition, it has been stated that the State is

hell-bent to nab the petitioner in the present case. The provision of Section 438 (1) Cr.P.C provides necessary ingredients with regard to invoking of provisions of Section 438 which is reproduced as follows:-

“438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

A bare perusal of the same would show that where any person has a '*reason to believe*' that he may be arrested on accusation of having committed a non-bailable offence, he may apply to High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail. This sub-section (1) of Section 438 Cr.P.C-- came up for interpretation before the Hon'ble Supreme Court in the Constitution Bench in the case of ***Gurbaksh Singh Sibbia and others vs. State of Punjab (1980) 2 SCC 565*** in which it has been held that the '*reason to believe*' should not be misrepresented as '*reason of fear*'. The principles which have been laid down by the Hon'ble Supreme Court in ***Gurbaksh Singh Sibbia's case (supra)*** state that there is no doubt that an application for anticipatory can be entertained and is perfectly maintainable even prior to the Stage of filing of the FIR but at least the condition *sine qua non* which is a condition precedent as contained under Section 438(1)

Cr.P.C has to be satisfied. The relevant part of aforestated judgment is reproduced as under:-

“Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non- bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as

large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under [Section 437](#) of the Code, as and when an occasion arises. Such a course will defeat the very object of [Section 438](#).

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under [Section 438](#). The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.

Fifthly, the provisions of [Section 438](#) cannot be invoked after the arrest of the accused. The grant of "anticipatory

bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

Learned counsel for the petitioner has not been able to satisfy as to whether in case the State wishes to take any action on the basis of second recommendation of the Punjab Vidhan Sabha then under which provision of law would he be booked, whether it would be a bailable offence or would it be a non-bailable offence or under which legislation would he be booked. Therefore, averments which have been made in the petition and also the argument raised by learned counsel for the petitioner seems to be vague, hypothetical and based upon some fear and not based on reasonable belief.

It is also equally important to note that the said recommendations (Annexure P-30) which have been subsequently adopted by the Punjab Vidhan Sabha vide Annexure P-31 have also been challenged by the petitioner in CWP No.1755 in which the entire recommendations have been challenged by the petitioner and the petitioner has also stated so in para No.19 of the said CWP. Therefore, the High Court is already seized of the matter pertaining to the legality of the resolution itself on the basis of which the petitioner is alleging to have any apprehension in this regard.

Therefore, considering the totality of circumstances in the present case and after hearing the learned counsel for the parties at length, it can not be said in the present case that the petitioner has been able to show to the Court that there is any reason to believe and so therefore, has not been able to fulfill the conditions which have been laid down under Section 438 (1) Cr.P.C and also the test which has been laid down by the Hon'ble Supreme Court.

Mere apprehension or fear itself can not become a ground for grant of anticipatory bail, particularly, in view of the fact that FIR has not been registered at this stage and also in view of the affidavits which have been filed by the State because as of now the matter is still under consideration and no action has been taken either by the Police or by the Vigilance Department.

In view of the above, I am not inclined to interfere in the present petition at this stage and therefore, the same is hereby ***dismissed***.

It is however, made clear that the subject matter of the present case pertains to the resolution of the recommendations made vide Annexure P-30 as adopted by the Punjab Vidhan Sabha vide Annexure P-31 regarding the alleged violations of the Privilege Rights and nothing observed or contained in this order would mean anything on the merits of the case and it is only for the purpose of deciding of the present anticipatory bail application.

7th February, 2020
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*