

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

CRM-M-26830-2020

Date of Decision : October 15th, 2020

Suresh Kumar Satija

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Kulbhushan Raheja, Advocate, for the petitioner.
Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

...

Sanjay Kumar, J.

The petitioner is one of the accused in FIR No.0185 dated 03.08.2020 on the file of Police Station City-1 Abohar, District Fazilka, registered under Sections 458, 307, 323, 506, 148 and 149 IPC, and Sections 25 and 27 of the Arms Act, 1959. By way of this petition filed under Section 438 Cr.P.C., he seeks grant of anticipatory bail.

The subject FIR was registered upon the complaint made by one Surinder Singh @ Vicky on 03.08.2020 at 19.33 hrs. Therein, he stated that he had purchased 27 Washing Machines from one Atul Gupta @ Ashu but was yet to make full payment therefor. According to the complainant, at about 09.30 P.M. on 02.08.2020, Atul Gupta @ Ashu called him on the phone and after 15 to 20 minutes thereafter, Atul Gupta @ Ashu along with the petitioner, who had a Danda in his hand, and one Maku came to his house and attacked him. Maku caught him by the neck

and punched him in his chest while the petitioner hit him with the Danda on his back. He thereupon fell down and Atul Gupta @ Ashu opened fire with his pistol. The bullet hit him on his right toe. He raised a hue and cry and his family members and others gathered. The accused thereupon fled from the spot. It is on the strength of this complaint that the subject FIR was registered.

Mr. Kulbhushan Raheja, learned counsel for the petitioner, would argue that the registration of the FIR by involving the petitioner was a concerted move on the part of the police authorities to implicate him, owing to political compulsions. According to him, the petitioner was not even present at the spot as he was at the house of his brother at that time. Learned counsel would contend that the CCTV footage available at the house of his brother would bear out this fact. He would also point out the delay in the registration of the FIR as the incident is stated to have taken place at about 9.30 PM on 02.08.2020 but the FIR was registered only at 07.33 PM on 03.08.2020. He would assert that the case against his client was concocted. He would further point out that, in any event, the injury attributed to the petitioner is a simple one and pray for relief.

The Deputy Superintendent of Police, Sub-Division Abohar, District Fazilka, filed a reply. Setting out the facts mentioned *supra*, he stated that custodial interrogation of the petitioner and the co-accused was required not only to ascertain the type of weapon used in the commission of the crime, viz., whether it was a country-made pistol or a licensed revolver, and also to ascertain as to what compelled the accused to enter

the house of the complainant with the intention of murdering him. He stated that all the accused were at large since 03.08.2020. He adverted to the past antecedents of the petitioner by furnishing the details of 13 FIRs registered against him since the year 2003. He pointed out that in most of the cases, the petitioner had either got the matter compromised or pressurized the witnesses into turning hostile, leading to his acquittal. The petitioner was stated to be involved in a jail break case as he was found present in the Sub-Jail, Fazilka, without authority. This case is the subject matter of FIR No.3 dated 05.01.2017 on the file of Police Station City Fazilka, registered under Sections 117, 188, 448 and 120-B IPC and Sections 42 and 54 of the Prisons Act. He pointed out that medical examination of the complainant had revealed that he had suffered a bullet injury on his right foot. He stated that the matter was under investigation by a duly constituted Special Investigation Team. As regards the delay aspect, he stated that the alleged incident occurred at about 9.30 PM on 02.08.2020 and the injured complainant was admitted at the Civil Hospital, Abohar, at about 11.25 PM on that day. He stated that the first priority of the complainant was to secure medical treatment and this led to a procedural delay in the registration of the FIR.

Mr. Kulbhushan Raheja, learned counsel for the petitioner, would point out that the petitioner was either acquitted or was given a clean chit, owing to cancellation reports being filed by the police authorities, in the cases referred to by the Deputy Superintendent. He relied upon case law to support his contention that the petitioner would be

entitled to grant of pre-arrest bail at this stage.

In **Siddharam Saatlingappa Mhetre vs. State of Maharashtra and others [(2011) 1 SCC 694]**, the Supreme Court observed that arrest should be the last option and should be restricted to those exceptional cases where arresting the accused would be imperative in the facts and circumstances of the case. The Supreme Court affirmed that the following factors and parameters can be taken into consideration while dealing with an application for anticipatory bail:

“112. 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 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 sections 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.”

In **Prabhakar Tewari vs. State of UP and another [2020 SCC OnLine SC 75]**, the Supreme Court held that even if the offence alleged is grave and serious and there are several criminal cases pending against an accused, such factors by themselves could not be the basis for refusal of the prayer for bail.

Though the case on hand is sought to be given political connotations owing to the alleged involvement of the petitioner, the offence, as such, is relatable to a purely personal attack upon the complainant. The petitioner is alleged to have participated in this attack.

He is stated to have inflicted a blow on the back of the complainant with a

Danda but the Medico-Legal Report shows that this injury was not a grievous one. Sections 148 and 149 IPC have been pressed into service but the applicability of these provisions has to be adjudicated by the trial Court at the appropriate stage. The criminal antecedents of the petitioner may therefore have no real impact on the case on hand, as the alleged offence was purely personal and limited to the complainant alone.

Further, though the Deputy Superintendent of Police mentioned that the investigation in this case is being undertaken by a Special Investigation Team, it appears that a decision was taken by the higher authorities, acting upon the request of the petitioner himself, to hand over the investigation in this case to a Special Investigation Team, comprising police officials of Ferozepur Range. This aspect was noted by this Court in its final order dated 08.10.2020 in CRM-M-24947-2020 filed by the petitioner seeking such relief.

Given the totality of the aforestated circumstances and the nature of the injury attributed to the petitioner, this Court is of the opinion that it would suffice at this stage if the petitioner joins investigation and cooperates with the police authorities. His claim that he was not even present at the spot at the relevant time would also have to be examined by the Special Investigation Team.

The petition is accordingly disposed of with the following directions: The petitioner shall forthwith join the investigation in FIR No.0185 dated 03.08.2020 on the file of Police Station City-1 Abohar, District Fazilka, and cooperate fully with the Special Investigation Team

that has now been constituted. In the event of the petitioner's arrest in relation to this case in future, he shall be enlarged on bail upon furnishing a personal bond for a sum of ₹ 1,00,000/- along with two sureties for a like sum each to the satisfaction of the Investigating/Arresting Officer. In such an event, the petitioner shall also abide by the conditions stipulated in Section 438(2) Cr.P.C.

October 15th, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	No