

1 CRM-M-37344 of 2020(O&M) and
CRM-M-37598 of 2020(O&M)

SHIVANI
2020.12.15 15:53
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Chandigarh

Sr.No.202

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

CRM-M-37344 of 2020(O&M)
Date of decision:01.12.2020

Mohit and others

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

CRM-M-37598 of 2020(O&M)

Ram Singh and others

.... Petitioners

Versus

State of Haryana

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Ramnish Puri, Advocate
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

Both the cases are taken up together for decision as the petitioners in both the cases are accused in the same FIR No.220 dated 12.05.2020 registered under Sections 147, 149, 323, 188, (325, 341, 506, 427 and 307 added later on) IPC at Police Station Khol, District Rewari and this Court vide order dated 16.11.2020 in CRM-M-37598 of 2020 had directed that it be heard alongwith

CRM-M-37344 of 2020. The petitioners in CRM-M-37344 of 2020 are on regular bail which was granted by the learned Trial Court whereas the petitioners in CRM-M-37598 of 2020 were earlier granted interim anticipatory bail which was thereafter, dismissed by the learned Additional Sessions Judge, Rewari.

CRM-M-37344 of 2020

Present petition has been filed under Section 438 Cr.P.C seeking anticipatory bail in FIR No.220 dated 12.05.2020 registered under Sections 147, 149, 323, 188, (325, 341, 506, 427 and 307 added later on) IPC at Police Station Khol, District Rewari.

Learned counsel for the petitioners has submitted that in the present case an FIR was lodged against the petitioner under Sections 325, 341, 427, 506 IPC on 12.05.2020 and it was a case of cross version. All the petitioners were arrested and were released on bail by the learned Magistrate on 15.05.2020. Thereafter, during the investigation process, an offence under Section 325 IPC was added on 21.05.2020 and thereafter, on the receipt of the medical opinion report which indicated injury on the head of one Baljeet which was declared to be dangerous to life, an offence under Section 307 IPC was added on 08.07.2020. Learned counsel for the petitioners has submitted that the petitioners are already on bail and now since Section 307 IPC has been added, they have filed present petition for grant of anticipatory bail.

Learned counsel has further submitted that till the time the bail of the petitioners is not cancelled, they cannot be re-arrested. He placed reliance upon the judgment of the Hon'ble Supreme Court in ***Pradeep Ram versus State of Jharkhand and another; 2019(3) R.C.R.(Criminal) 538*** to contend that once an accused is on bail then he cannot be arrested on the basis of addition of another section unless the earlier bail granted to the accused is canceled. He has further

submitted that in view of the aforesaid legal position the petitioners are entitled to grant of anticipatory bail.

On the other hand, learned State counsel has submitted by referring to an affidavit filed by Deputy Superintendent of Police, Headquarters, District Rewari that the present FIR was registered under Sections 147, 149, 323, 188 IPC and subsequently upon investigation Sections 341, 506, 427 IPC were added and thereafter, petitioners were arrested and produced before the Court of learned Area Magistrate on 15.05.2020 and were released on bail. Thereafter, during investigation offence punishable under Section 325 IPC was added on 21.05.2020 and on 08.7.2020 consequent upon the receipt of medical opinion vide which the injury on the head of Baljeet was declared as dangerous for life, offence punishable under Section 307 IPC was added and accordingly, an application was moved before the learned Area Magistrate seeking permission to re-arrest the petitioners and other accused in the present case.

Learned State counsel has submitted that the present petition filed by the petitioners is totally misconceived. He also relied upon the judgment of the Hon'ble Supreme Court rendered in Pradeep Ram's case(supra) and has referred to para 29 of the aforesaid judgment which is reproduced as under:-

“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.](#) 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.](#), 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.

Learned State counsel has submitted that as per the law laid down by the Hon'ble Supreme Court, it has been held that where after the grant of bail to an accused, further cognizable and non-bailable offences are added, then the accused can surrender and apply for bail for newly added non-bailable offences and cognizable offences and in the event of refusal of bail the accused can certainly be arrested and investigating agency can also seek an order from the court under [Section 437\(5\)](#) or [439\(2\)](#) Cr.P.C for arrest of the accused and his custody and in the case where an accused is already on 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. Learned State counsel has

further submitted that State has already adopted the aforesaid procedure in accordance with the law laid down by the Hon'ble Supreme Court. While again referring to an affidavit which has been filed by the Deputy Superintendent of Police, Headquarters, District Rewari wherein in para No.5 it has been specifically stated that an application was moved before the learned Area Magistrate for seeking permission to re-arrest the petitioners and the other accused. He has submitted that once an application has been filed for seeking permission from the Court for re-arresting the petitioners and other co-accused there was no occasion for the petitioners to have filed the present petition for seeking anticipatory bail. He has further submitted on instructions that due procedure will be followed in accordance with law laid down by the Hon'ble Supreme Court. He has also submitted that even otherwise also there is no averment in the present petition with regard to any apprehension even remotely suggested by the petitioner that they are apprehending any arrest without following procedure. He has therefore, prayed for dismissal of the present petition.

I have heard the learned counsel for the parties and perused the available record.

The law with regard to the permissibility to re-arrest the accused who is on bail on the basis of addition of cognizable offence is no longer *res integra*. In Pradeep Ram's case(supra), the Hon'ble Supreme Court has laid down the law in this regard. In the affidavit which has been filed by the State, it has been categorically stated in para 5 that the State has moved an application before the learned Area Magistrate seeking permission to re-arrest the petitioner and the other accused, and therefore, apparently the State has followed the procedure in accordance with the law laid down by the Hon'ble Supreme Court. The pleadings as well as argument raised by the learned State counsel does not suggest an *iota* of

apprehension in the minds of the petitioners that would be arrested by the police without following the procedure.

Hon'ble Supreme Court dealt with sub-section (1) of [Section 438 Cr.P.C](#)—which came up for interpretation before it 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 bail 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.”

It has been held by the Hon’ble Supreme Court while interpreting Section 438 Cr.P.C that when any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply for anticipatory bail. A perusal of the entire petition filed by the petitioners would show that the petitioners have not expressed any apprehension at anywhere with regard to the same. Apart from this, once the State itself has taken a stand in the form of an affidavit that they have themselves moved an application before the learned Area Magistrate for seeking permission to re-arrest the petitioners then the same is certainly in accordance with the law laid down by the Hon’ble Supreme Court in Pradeep Ram’s case(supra). Therefore, the present petition being misconceived is hereby dismissed.

CRM-M-37598 of 2020

Present petition has been filed under Section 438 Cr.P.C seeking anticipatory bail in FIR No.220, dated 12.05.2020 registered under Sections 147, 149, 323, 188(325, 341, 506, 427 and 307 added later on) IPC at Police Station Khol, District Rewari.

Learned counsel for the petitioners has submitted that in the present case the petitioners have been falsely implicated and earlier the petitioners were granted interim anticipatory bail by the learned Additional and Sessions Judge, Rewari on 01.07.2020 and later on 08.07.2020 on the basis of the opinion of the doctor that the injury No.1 on the person of Baljeet Singh was dangerous to life, Section 307 IPC was added and therefore, vide orders dated 09.07.2020, the learned Additional Sessions Judge, Rewari vacated the interim anticipatory bail and dismissed the main application. Learned counsel for the petitioners has further submitted that in the present case, no role was attributed to the petitioners and there was no specific injury attributed to the petitioners and furthermore, it was a case of cross-version and initially, the FIR was registered under Sections 147, 149, 323, 325, 188, 341, 506, 427 IPC and the petitioners have been granted interim anticipatory bail on 01.07.2020. Thereafter, medical opinion was received with regard to the injury No.1 on the person of Baljeet Singh and then on adding of Section 307 IPC, the anticipatory bail was dismissed on 09.07.2020 without any justifiable reason. He has submitted that it was a case of cross-version and that the petitioners were not at fault and therefore, has prayed for the grant of anticipatory bail to the petitioners. He has also relied upon the judgment of the Hon'ble Supreme Court in Pradeep Ram's case(supra) by submitting that once bail has been granted to the petitioners then on the mere addition of an offence under Section 307 IPC the petitioners cannot be arrested.

Per contra, learned State counsel has submitted that it is a case where direct allegations have been attributed to the petitioners who have been named in the FIR alongwith other accused and there are total 28 accused in the present FIR. He has submitted that as per the allegations, a group of these people had attacked in ambush and one of the accused namely, Bhaskar had given injury on the head of

Baljeet Singh with an axe and thereafter, all the accused had attacked with lathi and dandas. He has further submitted that it has been specifically mentioned in the FIR that all the accused had attacked with lathis and dandas and the complainant on hearing the screaming and to rescue the injured but all the accused surrounded the complainant from all sides and started beating with wooden sticks and injured him. Therefore, Baljeet Singh became unconscious on the road and fell down and various other allegations have been made in the FIR. He has further submitted that during the investigation an offence under Section 325 IPC was added on 21.05.2020 and thereafter, on 08.07.2020 consequent upon the receipt of medical opinion wherein it was stated that the injury on the head of Baljeet Singh was declared to be dangerous to life, offence punishable under Section 307 IPC was added. He has further submitted that although there is a cross version of the occurrence also and regarding which an FIR No.222, dated 12.05.2020 has also been registered against the complainant party for commission of offence punishable under Section 147, 149, 188, 323 and 506 IPC, however, he has submitted that mere fact that it was a case of cross-version does not entitle the petitioner for grant of anticipatory bail particularly in view of the fact that on the basis of medical opinion report the injury on the head of Baljeet Singh has been declared to be dangerous to life. Learned State counsel has further submitted that it was a case where group of people had attacked aforesaid Baljeet Singh which caused head injury and therefore, the mere fact that particular attack was made with an axe by one Bhaskar cannot become a ground for anticipatory bail to the other accused who participated in the offence

Referring to the contents of the FIR, learned State counsel has submitted that a group of people including the petitioners had attacked together and it has been stated in the FIR that all the accused attacked with lathis and

dandas and therefore, custodial investigation is very essential in the present case especially for the recovery of the weapons and regarding the involvement of other persons who participated in the offence.

Learned State counsel has further submitted that the aforesaid judgment in Pradeep Ram's case (supra) would not apply in the present case in view of the fact that the petitioners were not on regular bail but were only on interim anticipatory bail which was granted on 01.07.2020 and when offence under Section 307 IPC was added on 08.07.2020 then on the very next date i.e., 09.07.2020 the anticipatory bail was dismissed.

I have heard the learned counsel for the parties and perused the available record.

In the present case, petitioners were granted interim anticipatory bail by the Additional Sessions Judge, Rewari on 01.07.2020 and thereafter, on 09.07.2020 the anticipatory bail was dismissed. Bare perusal of the FIR would show that all the petitioners in the present case has been named in the FIR alongwith 28 total accused and the allegations are that all the accused had attacked the injured. The mere fact that one of the co-accused namely, Bhaskar had given injury on Baljeet's head with an axe would not entitle the petitioners for grant of anticipatory bail solely on this ground. Once there is an alleged gang attack, the petitioners cannot claim the concession of anticipatory bail only on the ground that out of the entire gang the role attributed to them was not pertaining to injury on the head of the injured which was ultimately declared to be dangerous to life. Reliance upon Pradeep Ram's case(supra) by the learned counsel for the petitioners is also misconceived in view of the fact that in the present case the petitioners were only on interim bail granted by interim anticipatory bail which has been ultimately dismissed on 09.07.2020.

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Therefore, considering the totality of circumstances in the present case, I do not deem it fit and appropriate to grant concession of anticipatory bail to the petitioners, consequently, the petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the cases and is meant only for the purpose of decision of present petitions.

1st December, 2020

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

[JASGURPREET SINGH PURI]

JUDGE

Yes/No

Yes/No