

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

CRM-M-4976-2021(O&M)

Date of decision:-22.2.2021

Vikas Gupta and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P.S. Deol, Senior Advocate with
Mr.Himmat Singh Deol, Advocate
for the petitioners.

Mr.Karan Garg, AAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioners Vikas Gupta and Amit Gupta sons of Diwan Chand, residents of 81-E Rani Bagh, Mahesh Nagar, Ambala Cantt., District Ambala, both of them being accused in FIR No.24 dated 22.1.2021, under Sections 186, 341, 353, 427, 506, 34 IPC, registered with Police Station Ambala Cantt., District Ambala.

Briefly stated, the facts of the case as per the prosecution story are that FIR in this case was got recorded by complainant Constable

Ishwar Singh, No.1373 from Police Station Ambala Cantt., District Ambala, aged about 35 years, who in the statement made by him to the police stated that he is deputed as driver at vehicle No.HR-3T-2422 of SHO, Police Station Ambala Cantt.; on 22.1.2021, he was driving the said vehicle having SHO Ambala Cantt. along with his Gunman Constable Narinder Kumar as occupants and they were present at Capital Chowk, Ambala Cantt. in connection with patrolling, where SHO received information that there was an apprehension of quarrel at Pansari Bazar, Ambala Cantt.; accordingly, they proceeded towards the said place and observed that there was a big crowd, which was raising hue and cry; samples of Desi Ghee had already been drawn from concern of Amit Trading Company by Subhash Chandra, Food and Drug Officer and Dr.Arvind Singh, Food Safety Officer and they were about to leave the place after completing the proceedings; at that time, Vikas Singla and Amit Singla (present petitioners) told their companions not to allow those officials to leave and they damaged the police vehicle; a Sikh person stopped the police vehicle and sat on its bonnet; petitioners stood in front of the vehicle and one person broke right side window of the police vehicle PCR-6 bearing No.HR-01AQ-1298; all the persons started raising voices – kill them and laid down in front of the vehicles; they started having a scuffle with the police party; later on name of the Sikh person was known as Kewal Singh son of Jagmohan Singh, resident of 55 Pargati Vihar behind B.D. Flour Mill, Ambala Cantt. and other person as Mukesh son of Ashok Kumar, resident of House No.42, Pargati Vihar, behind B.D. Flour Mill, Ambala Cantt., presently tenant at Ekta Vihar, near Suraj

Property Dealer, Ambala Cantt. In his such statement to the police, the complainant Constable Ishwar Singh stated that Kewal Singh, Mukesh, Vikas Singla, Amit Singla along with 10-12 persons had caused hurdles in performance of official duties by obstructing the passage of police party, climbing on the bonnet of the Government Vehicle and breaking right window of government vehicle and holding out threats to the officials. On the basis of such statement, formal FIR was recorded. The investigation in the case started.

Apprehending their arrest in this case, both the petitioners, who have been referred in the FIR as Vikas Singla and Amit Singla, though their identity as petitioners Vikas Gupta and Amit Gupta respectively is not disputed, had approached the Court of Sessions at Ambala seeking grant of pre-arrest bail by filing an application in that regard, which was assigned to learned Additional Sessions Judge, Ambala. However, their such request was declined by learned Additional Sessions Judge, Ambala vide detailed order dated 29.1.2021. Therefore, they have approached this Court by way of filing the instant petition asking for the similar relief.

Notice of the petition was issued to respondent – State. Counsel representing State has appeared on behalf of respondent – State.

I have heard learned counsel for the parties besides going through the records.

In this case names of both the petitioners find mention in the FIR and specific criminal acts have been attributed to them i.e. their telling their accomplices not to allow Subhash Chandra, Food and Drug Officer as well as Dr.Arvind Singh, Food Safety Officer, who had drawn

samples of Desi Ghee from the premises of Amit Trading Company, Pansari Bazar, Ambala Cantt. to leave and to go and damage the police vehicle and co-accused of the present petitioners, namely Kewal Singh having stopped official police vehicle, driven by the complainant and sitting on the bonnet, whereas petitioners along with others coming in front of the vehicle and one of their accomplice breaking the right side window of government vehicle PCR-6 bearing No.HR-01AQ-1298 and further raising voices of killing the government officials, laying down in front of the official vehicles having a scuffle with the police party and thus obstructing the public servants in performance of their official duties.

In support of these allegations in the FIR, the State counsel has placed on file the photographs showing presence of petitioners along with many other persons at the spot in the form of a mob as well of a government vehicle in damaged condition. A DVD in which the incident has been captured has also been made part of the record.

It being so, the arguments advanced by the learned counsel for the petitioners that petitioners have not committed any offence and had not caused any obstruction in the performance of official duties by public servants cannot be accepted.

Although learned Senior counsel for the petitioners has tried to build up an argument that the team of Health Department was not justified in raiding premises of Amit Trading Company, Pansari Bazar, since no Ghee was stored there and they were not having any search warrants for the purpose but then the legality of raid being conducted and drawing of samples of Desi Ghee from the premises of Amit Trading

Company is to be seen at the time of trial. This Court while determining the question as to whether the petitioners are entitled to pre-arrest bail or not is not to hold any trial touching the merits of the case. While determining the entitlement of accused to discretionary equitable relief of pre-arrest bail, the merits of the case are not required to be dealt with in detail.

The photographs and the DVD placed on file by the State counsel belie the submissions made by learned Senior counsel for the petitioners that as a matter of fact no physical assault of any nature or any violent act was carried out by the petitioners or other persons present there and it was simply a case of commotion. As per own case of the petitioners, two of shopkeepers namely Kewal Singh and Mukesh Kumar had been arrested by the police from the spot. If such persons had not done anything wrong, then there was no question of their having been taken into custody by the police and their subsequent release on bail by learned Magistrate.

Learned Senior counsel for the petitioners contended that Vikas Gupta is a President of Traders Welfare Society, Ambala having membership of about 300 persons and this society is engaged in major activities in the field of trade implementing several schemes launched by the Government, in that way he is a highly respected figure in the town, whereas Amit Gupta is proprietor of M/s Amit Trading Company dealing in trade of Desi Ghee and both have clean antecedents and do not have any past criminal record. He has contended that the petitioners have been falsely involved in this case to tarnish their reputation; they are ready and

willing to join the investigation and render full cooperation; their arrest is not going to serve any purpose as such, they be granted pre-arrest bail.

Whereas, learned State counsel has opposed the request vehemently contending that the petitioners have committed serious offence of assaulting the public servants on duty and being part of the mob, which had attacked the government officials on duty and causing damage to a vehicle and they do not deserve any concession of pre-arrest bail.

After hearing the rival contentions, I find that petitioners are not entitled to discretionary equitable relief of pre-arrest bail since it is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

While dealing with a petition for anticipatory bail and considering whether the prayer is to be accepted or declined, the Court has to strike balance between two factors, firstly free, fair and full investigation in the case should not be adversely affected and secondly harassment, humiliation and unjustified detention of accused should avoided.

In this case the petitioners may be well established businessmen having good reputation with no past criminal record but that does not justify taking law into their hands and assaulting the public servants on duty. The Constitution of India provides equality before law to every citizen without taking into consideration factors like financial position, political or social status of a wrongdoer etc. If a person is on the

wrong side of law, rich or poor, a big wig or an ordinary person, male or female, he or she shall have to face the consequences for the same. Even if the petitioners are doing something good for the society, as asserted by learned Senior counsel for the petitioners, it is a good gesture on their part but merely due to that reason, criminal acts committed by them do not get diluted or vanished and the same cannot be condoned. They cannot possibly expect a different treatment than meted out to other culprits guilty of similar offences. In a society where rule of law prevails, nobody is permitted to take law into his own hands howsoever aggrieved, he may be by any alleged wrongful act on the part of the other person may be a public servant. Otherwise, there would be a total chaos having law of jungle i.e. might is right, which can certainly be not permitted. In case the petitioners were aggrieved by any alleged wrongful act on the part of the raiding team of Health Department, they could have lodged complaint with the Health Department or Law Enforcement Agency rather than taking law into their own hands. In this case there was nothing to show any previous enmity between the complainant and the accused, which might have prompted the former to implicate the petitioners falsely in this case.

Such type of conduct cannot be taken lightly since if culprits indulging in assaulting public servants on duty are dealt with leniency, then the public servants would get demoralized and disheartened, in the process affecting their efficiency and devotion to the duty sending a wrong signal in the society that one can use force against the public servants and get away very easily.

In a recent judgment *P. Chidambaram Versus Directorate of Enforcement, Criminal Appeal No.1340-2019 arising out of SLP(Crl.) No.7523 of 2019*, the Apex Court in para No.81 has observed as under:

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent – Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

In a judgment *Shobhan Singh Khanka Versus State of Jharkhand, 2012(2) RCR(Criminal)535*, the Apex Court enumerated the factors, which have to be considered for granting anticipatory bail. This is so mentioned in para No.12 of the judgment, which for ready reference is being reproduced as under:

12) While considering the claim of pre-arrest bail, the following factors have to be considered:

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and*

(iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested. Considering the limited allegation in the FIR and other details, his academic qualifications including the fact that he does not belong to the State of Jharkhand and has no relatives and is not a Member of the JPSC, acted as Expert No.1 only for a short period, the appellant has made out a case for anticipatory bail. Even if the prosecution has any apprehension, sub-section (2) of [Section 438](#) enables the court concerned to impose such conditions/directions as it may think fit.*

The Apex Court in judgment **Balchand Jain Versus State of M.P., 1977 CriLJ 225** had observed that Section 438 of the Code is an extraordinary remedy and should be resorted to only in special cases.

In another judgment **State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268**, the Supreme Court making distinction between grant of anticipatory bail and regular bail had observed that the rule that bail and not jail is more germane while considering an application for post-arrest bail and consideration which would weigh with the Court for anticipatory bail need not be the same as for an application to release on bail on after arrest.

There is sufficient prima facie material available on the record to come to the believe that the accused have committed offences complained of in the FIR and the apprehension expressed by the State counsel that in case they are granted pre-arrest bail, there are reasonable chances of their trying to tamper with the prosecution evidence cannot be brushed aside lightly.

Custodial interrogation of the petitioners is definitely required to find out the necessary details of the incident like the persons who constituted the mob and role played by each one of them, whether any person was having any weapon, if so the details of such person(s) and the weapon carried by him/them etc. In case custodial interrogation of the petitioners is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

Finding no merits in the petition, the same stands dismissed.

However, nothing discussed above shall construe any opinion on the merits of the case.

22.2.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No