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

CRM-M-32379-2021

Date of decision : 09.12.2021

Pawan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Gaurav Aggarwal, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.235 dated 03.08.2020 registered under Sections 147, 148, 149, 323, 506 of the Indian Penal Code, 1860 (Sections 307 and 325 of IPC have been added later on) at Police Station Kherki Daula, District Gurugram, Haryana.

On 12.08.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

“The case has been taken up for hearing through video conferencing.

The petitioner has filed this petition under Section

438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.235 dated 03.08.2020 registered under Sections 147, 148, 323 and 506 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') of the Indian Penal Code, 1860 at Police Station Kherki Daula, District Gurugam to which Sections 307 and 325 of the IPC were added lateron.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. As per the prosecution version the petitioner was armed with danda but no specific injury has been attributed to him. Injury which was declared to be dangerous to life is attributed to co-accused Suresh. The petitioner is ready to join the investigation. The petitioner was declared proclaimed person and the petition bearing No.CRM-M-32278-2021 for quashing of the order whereby he was declared proclaimed person is pending and is fixed for hearing on 08.09.2021.

Notice of motion.

Pursuant to supply of advance copy, Mr. Sumit Jain, Addl. A.G. Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel seeks time to file reply.

Adjourned to 08.09.2021.

To be heard CRM-M-32278-2021.”

Thereafter, on 28.09.2021, learned counsel for the petitioner had submitted that since the petitioner did not have the interim protection, he had not joined the investigation and thereby, interim protection was granted to the petitioner by this Court so that petitioner could join the investigation and the case was adjourned to 29.11.2021. The order dated 28.09.2021 is reproduced hereunder:-

“Learned State counsel, on instructions from ASI Surjeet Singh, has submitted that the petitioner has not joined the investigation.

Learned counsel for the petitioner has submitted that since the petitioner does not have the interim protection, thus, he has not joined the investigation and has also submitted that the injury under Section 307 IPC is not attributed to the petitioner.

Adjourned to 29.11.2021.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.”

On 29.11.2021, the following order was passed:-

“Learned counsel for the petitioner has submitted that in pursuance of the order dated 28.09.2021 passed by this Court, the petitioner has appeared before the Court of Judicial Magistrate Ist Class, Gurugram and has submitted his bail bonds and surety bonds which have been accepted and attested.

Learned counsel for the State, on instructions from ASI Ishwar Singh, has submitted that in the present case, the petitioner had to appear before the Arresting/Investigating Officer also and he has not done so. It is further submitted that the petitioner was declared as proclaimed offender on 04.08.2020.

Learned counsel for the petitioner has submitted that the petitioner will appear before the

Arresting/Investigating Officer on 02.12.2021 at 11:00 am and seeks a short adjournment.

Adjourned to 09.12.2021.

Interim order to continue.”

Learned counsel for the petitioner has submitted that in pursuance of the abovesaid order dated 29.11.2021, the petitioner has joined the investigation.

Learned State Counsel, on instructions from SI Suresh Kumar, has submitted that the petitioner has joined the investigation on 04.12.2021 and is not required for any further custodial interrogation.

Learned counsel for the complainant has, however, opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that the petitioner is involved in three other cases and is a habitual offender. It is further contended that the petitioner alongwith other co-accused persons had caused injuries to the complainant which were of such nature that offence under Section 307 of IPC was added later on.

In response to the abovesaid argument, learned counsel for the petitioner has submitted that as far as the other FIRs are concerned, the petitioner is on bail in the said cases and has relied upon has relied upon the judgment of Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi vs. State of U.P. and another**”, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion

of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the abovesaid facts and circumstances, moreso the facts which have been noticed in order dated 12.08.2021 and also the fact that the petitioner has joined the investigation and is not required for further custodial interrogation and also in view of law laid down in **Maulana's** case (Supra), the present petition is allowed and the interim order dated 28.09.2021 is ordered to be made absolute.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present anticipatory bail granted to the petitioner.

09.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No