

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

203

**CRM-M-28507-2020
Date of decision: 19.02.2021**

Mahender Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ashit Malik, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana
for the respondent-State.

Mr. Sameer S. Tiwari, Advocate for
Mr. B.S. Tewatia, Advocate
for the complainant.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C") for grant of anticipatory bail in case FIR No. 83 dated 10.03.2020 registered under Sections 148, 149, 323, 325, 307, 302, 506 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Gadpuri, District Palwal.

While issuing notice of motion on 18.09.2020, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation and the relevant part of the said order reads as under:-

"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. 83 dated 10.03.2020 registered under Sections 148, 149, 323, 325, 307, 302, 506 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Gadpuri, District Palwal.

As per prosecution version, on 09.03.2020 when complainant and his nephew Narbir were returning to their house in their Breeza Car and entered the street leading to their house, they found that Ved Pal, Ombir, Puran and Jeetu alongwith three other persons had parked their red coloured jeep in the street. On being asked to clear the passage, Ved Pal abused the complainant and on objection by the complainant for such behaviour, Ved Pal with an intention to kill fired at the complainant who had narrow escape. Thereafter, the complainant made phone call to his brother Vijay Pal to come for his rescue as he had been encircled by the above said persons. His brother Vijay Pal came there on motorcycle. Co-accused Ved Pal shot at Vijay Pal from his pistol and the bullet hit on his chest. Co-accused Jeetu also fired and the bullet hit the hand of his brother Vijay Pal. When he (the complainant) raised alarm, all the accused fled in their vehicles after hitting their car while threatening to kill the complainant and his nephew Narbir.

Learned Counsel for the petitioner has submitted that the petitioner was not named in the FIR. The petitioner has been implicated on the basis of disclosure statement made by co-accused Ved Pal. Even in the said disclosure statement no overt act has been attributed to the petitioner. It was case of sudden altercation in which co-accused Ved Pal and Jeetu fired at deceased Vijay Pal brother of complainant Sudesh. At the time of occurrence the car was being driven by co-accused Ved Pal and it was he who had struck against the car of the complainant. Even, if the prosecution story is taken to be gospel truth then also no offence is made out against the petitioner who was not armed with any weapon and was just accompanying the accused at the relevant time and there was absolutely no meeting of mind between the petitioner and co-accused Ved Pal and Jeetu. The petitioner is ready to join the investigation and his custodial interrogation is not required for effecting any recovery.

Notice of motion.

Pursuant to supply of advance copy, Mr. Naveen Singh Panwar, DAG, Haryana has appeared and accepted notice on behalf of the respondent-State.

At this stage, Mr. B. S. Tewatia, Advocate has appeared on behalf of complainant and he undertakes to file his power of attorney in the Registry.

Learned State Counsel and learned Counsel for the complainant have submitted that the petitioner was accompanying the co-accused Ved Pal and others. The petitioner alongwith co-accused encircled complainant Sudesh. The petitioner actively participated in the commission of murder of Vijay Pal. However, learned State Counsel and learned Counsel for the complainant

seek time to file detailed reply.

Adjourned to 01.10.2020 for filing reply by learned State Counsel and learned Counsel for the complainant.

In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. The petitioner shall also join Test Identification Parade if any to be got conducted by the Investigating Officer of the case. In the event of his arrest, the petitioner shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which he shall not be entitled to the protection of interim bail allowed to him.

Reply alongwith report of the Test Identification Parade if any got conducted be filed on that date."

The petition has been opposed by the respondent-State in terms of reply filed by way of affidavit of Yashpal Khatana, HPS, Deputy Superintendent of Police, Palwal, District Palwal and additional reply filed by way of affidavit of Yashpal Singh, HPS, Deputy Superintendent of Police, Palwal, District Palwal.

The petition has also been opposed by the complainant. However, no reply has been filed by the complainant.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for the complainant and have gone through the record.

Learned Counsel for the petitioner has, while reiterating submissions made on 18.09.2020, submitted that during test identification parade conducted for identification of the petitioner, the complainant did not identify the petitioner as the person involved in the crime. The petitioner has already joined the investigation during test identification parade and he may be granted anticipatory bail as his custodial interrogation is not required in the case.

Learned Counsel for the petitioner has filed copy of test identification parade which is taken on record.

Learned State Counsel has, on instructions from Inspector Jangsher Singh, acknowledged that the petitioner was not identified by the complainant during the test identification parade and submitted that custodial interrogation of the petitioner is not required in the case.

Learned Counsel for the complainant has submitted that the complainant has already filed petition for directing the concerned official respondents to conduct proper/fair investigation of the case which is pending. In view of nature of accusation and involvement of the petitioner as disclosed by co-accused Ved Pal, the petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that the petitioner is not identified by the complainant to be the person involved in the crime and also the fact that the custodial interrogation of the petitioner is not required in the case and there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 18.09.2020 granting interim bail to the petitioner is made absolute. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall abide by the conditions

enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to him.

19.02.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No