

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

**209/2**

**CRM-M-36202-2020**

**Date of decision: 18.01.2021**

Gitesh Uppal alias Kaku through his Sister Anjali Uppal

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Salil Dev Singh Bali, Advocate  
for the petitioner.

Mr. P.S. Walia, Asstt. A.G. Punjab  
for the respondent-State.

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**ARUN KUMAR TYAGI, J. (ORAL)**

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

The petitioner has filed the present 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.107 dated 29.05.2020 registered under Sections 323, 342, 452, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Dharamkot, District Moga to which Sections 304, 325 and 442 of the IPC were added lateron.

While issuing notice of motion on 09.11.2020 this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation and the said order reads as under:-

“The petitioner has filed the present 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.107 dated 29.05.2020 registered under Sections 323, 342, 452, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Dharamkot, District Moga to which Sections 304, 325 and 442 of the IPC were added lateron.

Learned Counsel for the petitioner has submitted that as per Birth Certificate date of birth of the petitioner is

03.01.2006 and the petitioner is a juvenile. The petitioner has been falsely implicated in the case. Even as per the allegations made in the FIR, the petitioner had caused simple injuries to Jaswinder Singh and the petitioner is not alleged to have caused any injury to deceased-Kuldeep Singh. Application filed by the petitioner for grant of anticipatory bail has been wrongly dismissed by learned Additional Sessions Judge (Duty) Moga vide order dated 16.06.2020 on the ground of inapplicability of Section 438 of the Cr.P.C. to a juvenile in conflict with law. In view of conflicting decisions in this regard, the Coordinate Bench of this Court has made reference in CRM-M-17856-2020 titled as 'Jatin Vs. State of Haryana' to Hon'ble the Chief Justice for constituting a Bench of appropriate strength for resolving the difference while extending interim protection to the juvenile. The petitioner is ready to join the investigation and may be granted anticipatory bail.

Notice of motion.

Pursuant to supply of advance copy of the petition, Mr. Rana Harjasdeep, DAG, Punjab has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel seeks time to file reply.

Adjourned to 18.01.2021.

In the meanwhile, the petitioner is directed to join the inquiry as and when called upon to do so. 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.”

The petition has been opposed by the learned State Counsel. However, no reply has been filed by the respondent-State.

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

Learned Counsel for the petitioner while reiterating submissions made on 09.11.2020 has submitted that in compliance with order dated 09.11.2020, the petitioner has joined the investigation.

Learned State Counsel has vehemently opposed the petition and submitted that in view of gravity of accusation, the petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

However, learned State Counsel has, on instructions from ASI Manjit Singh, acknowledged that in compliance with order dated

09.11.2020 passed by this Court, the petitioner has joined the investigation and that his custodial interrogation in the present case is not required for effecting any recovery.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that 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 tempering 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 09.11.2020 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.

**18.01.2021**

Vishal

**(ARUN KUMAR TYAGI)  
JUDGE**

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