

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

101

CRM-M-37711-2020 (O&M)

Date of decision : 04.03.2021

Suresh Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for respondent No.1-State.

Mr. Bhisham Kumar, Advocate
for respondent No.2.

ARUN KUMAR TYAGI, J (ORAL)

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

CRM-5963-2021

For the reasons mentioned in the application, the same is allowed and typed copies/photocopies of the application for demarcation, Khasra Girdawari and Jamabandi are taken on record as Annexures P-11 to P-13.

CRM-M-37711-2020

The petitioner has filed the present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for grant of anticipatory bail in case FIR No.158 dated 03.05.2020 registered under Sections 148, 188, 307, 323 and 506 read with Section 149 of the Indian Penal Code, 1860 and Section 27(3) of

the Arms Act, 1959 in Police Station Hodal, District Palwal.

The above-said FIR was registered on statement of Kunwar Singh. In his statement Kunwar Sain, inter alia, alleged that land of Babu Ram, adjoining the land of Sita Ram and his sons, has been taken on lease by the complainant side. Sita Ram and his sons had forcibly cultivated path of complainant's land. On 02.05.2020 he called the parties at about 9:00 a.m. for measurement but the accused party did not reach there. Thereafter, 7-8 persons came on motorcycles with lathies and other weapons at about 10:00 a.m. and attacked them. Suresh fired a shot from his pistol at Parsharam @ Bhola with intention to kill him which hit him on the left side of his back. Lehkraj inflicted blow on the hand of Balkishan with the back side of Farsa. Puddo inflicted lathi blow on the head of Kunwar Sain and on nose, hand and foot of Hukam Singh. Bhupram, with intention to kill, ran over his tractor over Nawal Singh due to which his pelvic born was fractured. The accused left the spot presuming Parsharam @ Bhola and Nawal to be dead while threatening to kill the complainant party in future.

Apprehending his arrest the petitioner has filed the present petition for grant of anticipatory bail.

The petition has been opposed by the learned State Counsel in terms of short reply filed by way of affidavit of Sh. Dinesh Kumar, HPS, Deputy Superintendent of Police, Hodal.

The petition has also been opposed by learned Counsel for respondent No.2. However, no reply has been filed by respondent No.2.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2 and have gone

through the record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The case involves version and cross-version as FIR No.159 dated 05.05.2020 was registered under Sections 148, 188, 285, 323 and 506 read with Section 149 of the IPC and Section 25 of the Arms Act, 1959 in Police Station Hodal, District Palwal at the instance of Giriraj from the accused party. Complainant party tried to forcibly take possession of the land in dispute. Sita Ram had made representation dated 29.04.2020 in this regard to the SHO, Police Station Hodel. Lakhraj and Sita Ram also received injuries at the hands of complainant party. Co-accused Sita Ram, Lekhraj, Pradeep @ Pardo and Bhoop Ram have already been granted anticipatory bail by learned Additional Sessions Judge, Palwal. Alleged offences are not made out against the petitioner. The petitioner is ready to join the investigation and his custodial interrogation is not necessary in the case. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel and learned Counsel for respondent No.2 have submitted that the petitioner fired with country made pistol at Parsharam @ Bhola who suffered fire arm injury at the left side of his back which endangered his life. Custodial interrogation of the petitioner is required for thorough investigation of the case and recovery of country made pistol. In view of nature of accusation and gravity of offences, the petitioner does not deserve the grant of anticipatory bail and the petition may be dismissed.

The Courts have been granted power to grant anticipatory

bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extra-ordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have also to be taken into consideration.

In ***Jai Prakash Singh Vs. State of Bihar and another*** : (2012) 4 SCC 379, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See also ***D.K. Ganesh Babu v. P.T. Manokaran*** (2007) 4 SCC 434, ***State of Maharashtra Vs. Mohd. Sajid Husain Mohd. S. Husain*** : (2008) 1 SCC 213 and ***Union of India v. Padam Narain Aggarwal*** : (2008) 13 SCC 305).

In ***P. Chidambaram Vs. Directorate of Enforcement (SC)*** : 2019(4) R.C.R.(Criminal) 875 Hon'ble Supreme Court observed as under :-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be

circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

In ***State Rep. by The CBI Vs. Anil Sharma : (1997) 7 SCC***

187, the Supreme Court held as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner making out prima facie case, the fact that the fire arm injury attracting Section 307 of the IPC is attributed to the petitioner, also the fact that custodial interrogation of the petitioner is required for thorough investigation of the case and recovery of country made pistol, quantum of sentence which conviction may entail, consequent 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 does not deserve the grant of anticipatory bail.

In view of the above, the petition for grant of anticipatory bail to the petitioner is hereby dismissed.

04.03.2021

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(ARUN KUMAR TYAGI)
JUDGE

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