

106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46874-2021

Date of Decision: 10.11.2021

SUNIL KUMAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.Amandeep Singh Manaise, Advocate for the petitioner
Ms.Gunkirat Kaur, AAG Punjab

Deepak Sibal, J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in FIR No128 dated 20.08.2020 registered under Sections 302, 307, 447, 511, 460, 509, 148, 149, 120-B IPC and Sections 25 & 27 of the Arms Act, 1959 at Police Station Bahavwala, District Fazilka.

Briefly stated, the case of the prosecution is that on 19.08.2020, co-accused Amit Kumar and his father Rajinder Kumar, accompanied by co-accused Ved Parkash and Ajay Kumar, visited the complainant and abused him for filing a complaint with the police. The complainant called the police which came and requested both sides to maintain peace. At about 9.15 p.m. on the same day when the complainant and his friend Parmod Kumar were returning to their house, the petitioner, armed with a rifle and his co-accused who were also armed with fire arms/ sticks were waiting for him. The petitioner and his co-accused then started throwing brick bats at

the complainant and his friend and later fired at them with their respective fire arms which led to the death of the complainant's friend - Parmod Kumar.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case; the petitioner does not face any other criminal case; the Special Investigation Team (for short, S.I.T.) had found the petitioner innocent; even in the report filed under Section 173 Cr.P.C. the petitioner was not found to have committed any offence; the bullet which killed Parmod Kumar was allegedly fired by co-accused Rajinder Kumar; since investigation in the case is complete the petitioner is no longer required for the same; similarly placed co-accused Ajay Kumar, who along with the petitioner, had also been found innocent by the S.I.T. has filed CRM-M-38530-2021 – Ajay Kumar vs. State of Punjab and through order dated 02.11.2021 passed by a coordinate Bench of this Court he has been granted ad interim anticipatory bail and that the weapon which the petitioner was allegedly armed with already stands deposited with an authorized arms dealer.

The present petition is the third one filed before this Court through which the petitioner seeks the grant of anticipatory bail. The first petition of his being CRM-M-43620-2020 – Sunil Kumar vs. State of Punjab was disposed of by this Court on 23.12.2020 with a direction to the State to give him 7 days notice in case the State requires his custodial interrogation.

The investigating agency found the petitioner innocent. However, the Trial Court found enough evidence on the record with regard to involvement of the petitioner in the murder of Parmod Kumar and

therefore, while exercising its powers under Section 193 Cr.P.C., summoned the petitioner to face trial alongwith his co-accused. On the happening of such an event, the petitioner again approached this Court for the grant of anticipatory bail. Such petition of his being CRM-M-37928-2021 - Sunil Kumar vs. State of Punjab was heard at length by this Court and when this Court was inclined to dismiss the same on merits, learned counsel appearing for the petitioner, fearing that any such order may prejudice the petitioner at a later stage in his trial, withdrew the petition with liberty to the petitioner to surrender/ appear before the Trial Court in pursuance to the aforesaid order of the Trial Court which had been impugned in that petition. Instead of putting in appearance before the Trial Court the petitioner has yet again knocked the doors of this Court through the instant petition for the grant of anticipatory bail primarily relying on the grant of ad-interim anticipatory bail by a coordinate Bench of this Court in the case of a co-accused – Ajay Kumar who like the petitioner had also been declared innocent by the S.I.T.

As noticed earlier, the petitioner's second petition for anticipatory bail being CRM-M-37928-2021 was argued and heard at length. All issues on merits were raised. However, when this Court was disinclined to grant the relief sought for, since the petitioner felt that such an order may prejudice him at a later stage in his trial, he sought and got permission to withdraw the said petition through the following order:-

“Status report filed by the State is ordered to be taken on record.

Learned counsel for the petitioner seeks to withdraw the present petition with liberty to the petitioner to appear before the Trial Court in pursuance to the order impugned in the present petition.

Dismissed as withdrawn with liberty as prayed for.

The only reason to again approach this Court through the present petition is the grant of ad interim anticipatory bail to co-accused – Ajay Kumar by a coordinate Bench of this Court.

The order relied upon in the case of Ajay Kumar is not a final order. Even otherwise, Ajay Kumar had not earlier withdrawn his petition for the grant of anticipatory bail and that too after having argued his entire case on merits. Even on merits, Ajay Kumar's case is distinguishable as he was alleged to be armed with a daang (stick) whereas the allegations against the petitioner are of being armed with a .22 bore rifle and of having fired at the complainant party. As per the prosecution 4 empty cartridges, fired from a .22 bore rifle have been recovered from the spot and that, except the petitioner, there was no other accused who was armed with a rifle of that calibre. There is also found on record a statement by co-accused Amit Kumar that the car allegedly used in the crime was owned by co-accused Sumit Kumar and that on the day of the occurrence the same had been borrowed by the petitioner from its owner. Further, at the time the Coordinate Bench passed the order dated 02.11.2021 in the case of Ajay Kumar, the final order dated 17.09.2021 passed in the case of the petitioner was not brought to its notice.

In the light of the above discussion and for the reason that the petitioner is accused of being part of an unlawful assembly which caused Parmod Kumar's murder as also because till date none of the prosecution witnesses have been examined, no case for the grant of anticipatory bail to the petitioner is made out.

Dismissed.

It is clarified that the above observations have been made only

for the limited purpose of deciding the present anticipatory bail application and the same would not be construed to be an expression of opinion on the merits of the case.

10.11.2021
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No