

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

202

CRM-M-48849-2019

Date of decision: 27.07.2021

Surinder @ Shinda and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioner.

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

Mr. Shivraj Angi, Advocate
for the complainant.

ARUN KUMAR TYAGI, J. (ORAL)

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

Petitioners-Surinder @ Shinda and Rajinder @ Nikka have 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.163 dated 09.10.2019 registered under Sections 365, 342 and 323 read with Section 34 of the Indian Penal Code, 1860 at Police Station City Fazilka, District Fazilka.

While issuing notice of motion on 18.11.2019, this Court had granted interim anticipatory bail to the petitioners with direction to join the investigation and the relevant part of the said order reads as under:-

"Learned Counsel for the petitioners has argued that the petitioners along with their co-accused Smile have

been booked under Sections 365, 342, 323 read with Section 34 of the IPC registered at the instance of complainant-David Masih on the allegations of having abducted, wrongfully confined and having beaten him. The said David Masih has molested co-accused Smile and on communication by her, the petitioners took the complainant-David Masih to the Police Station City Fazilka but by distorting the facts, the petitioners and their co-accused were falsely implicated.

Notice of motion.

On the asking of the Court, Mr. Sandeep Singh Deol, D.A.G. Punjab accepts notice on behalf of the respondent-State. Copy of the paper book has been supplied to the Learned State Counsel, who seeks time to complete his instructions.

Adjourned to 17.01.2020.

In the meanwhile, the petitioners are directed to join the investigation as and when called upon to do so. In the event of their arrest, the petitioners be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by the petitioners to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall forfeit the benefit of interim bail allowed to them."

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

The complainant has also opposed the petition through Mr. Shivraj Angi, Advocate who has filed copy of his power of attorney through e-mail print out of which is taken on record. Original power of attorney be filed in the Registry of this Court.

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

Learned Senior Counsel for the petitioners has, while reiterating submissions made earlier, submitted that in compliance with order dated 18.11.2019, the petitioners have joined the investigation

and their custodial interrogation is not required in the case. Investigation has been completed and challan has been filed. Therefore, the petitioners may be granted anticipatory bail.

On the other hand, learned State Counsel and learned Counsel for the complainant have vehemently opposed the petition and submitted that as mentioned in the FIR hand of the complainant accidentally touched Smile Kaur but the complainant was given beating and number of injuries were caused to him. The petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

However, learned State Counsel has, on instructions from ASI Balkar Singh, acknowledged that in compliance with order dated 18.11.2019 passed by this Court, the petitioners have joined the investigation and that their custodial interrogation is not required in the case.

In view of the facts and circumstances of the case, nature of accusation against the petitioners, the fact that custodial interrogation of the petitioners is not required in the case and there is no material to justify the apprehension of the petitioners 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 petitioners deserve the grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 18.11.2019 granting interim bail to the petitioners is made absolute. However, the petitioners 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 them.

27.07.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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