

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

**CRM-M No. 3693 of 2022
Date of Decision: 07.04.2022**

Gurbaksh Singh @ Jony

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Gopal Singh Nahel, Advocate for the petitioner.

Ms. Bhavna Gupta, Deputy Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition under Section 438 Cr.P.C., seeks grant of anticipatory bail in case FIR No. 11 of 30.01.2021, which was registered against him, at Police Station Amargarh, District Sangrur, constituting therein offences under Sections 302, 120-B, 34 of the Indian Penal Code (Section 120-B of the IPC deleted later on).

2. Though the incriminatory role, as, attributed to the petitioner herein in the FIR (supra), became exonerated by the Investigating Officer (IO) concerned, in his report filed under Section 173 of the Cr.P.C., before the learned Committal Court concerned. However, after completion of the committal proceedings, and, after the framing of the relevant charges against the accused, as, named in the report filed under Section 173 of the Cr.P.C., and, thereafter, upon the PW concerned, stepping into the witness box, and, making in his examination-in-chief inculpatory echoings against the petitioner, rather led the Public Prosecutor concerned, to move against the petitioner herein, an application cast under Section 319 of the Cr.P.C., before the learned Additional Sessions Judge, Sangrur. Upon the afore made

application, the learned trial Judge concerned, made an affirmative order,

and, thereafter also made an order for summoning the accused for his facing trial alongwith the co-accused, as, named in the report under Section 173 of the Cr.P.C., in respect of offences (supra), carried in FIR (supra).

3. Though, the above order has not been challenged by the petitioner herein, and, though is stated at the Bar by the learned counsel for the petitioner, that it is likely to be challenged. However, the learned counsel for petitioner, even for want of any challenge being thrown thereto, before this Court, rather still contends that the summoning order, as, made by the learned Additional Sessions Judge concerned, after his allowing the Public Prosecutor's application cast under Section 319 of the Cr.P.C, does engineer qua the petitioner, the requisite, reason(s) to believe that he is likely to be arrested, upon, his making his appearance before the learned trial Judge concerned. Therefore, he contends that the extant application cast under Section 438 of the Cr.P.C., becomes maintainable.

4. Consequently, it is to be determined whether the afore apprehension reared, by the present bail petitioner, makes it fall, within the ambit of the provisions of Section 438 of the Cr.P.C., wherein, upon the accused concerned, upon nursing an apprehensions qua there being every likelihood of his becoming arrested, by the IO concerned, in respect of non-bailable offences, constituted in the FIR (supra), rather makes him bestowed with a statutory privilege, to access the Courts of law, hence for his becoming admitted to anticipatory bail.

5. The learned State Counsel, however, contests the maintainability of the instant petition, before this Court, on the ground that the accessings of this Court, hence by the aggrieved from an affirmative order, made the prosecutor's application cast under Section 319 of the

Cr.P.C., rather is post investigations, and, that when the privilege made through the mandate carried under Section 438 of the Cr.P.C., is only, qua those persons, rather apprehending their arrest by the IO concerned, when the latter is yet holding investigations into non-bailable offences, besides for completion of the investigations, the arrest of person(s) concerned, rather becomes necessitated. Therefore, the learned State Counsel obviously contends, that the above apprehension as reared, by the petitioner, after his becoming added in the array of accused, by the learned trial Judge concerned, after his allowing the prosecutor's application cast, under Section 319 of the Cr.P.C., when becomes not related either to investigation, nor obviously when during course thereof, the bail applicant is prima facie not required to be arrested. Consequently, the learned State Counsel contends, that there is no merit in the application, and, if rather the learned trial Judge concerned, deems it fit, upon non-appearance(s) of the petitioner, on the date(s), when the Sessions Case is listed, for any efficacious purposes, he can, in accordance with law, cause the arrest of the bail petitioner, through issuance of non-bailable warrants upon the accused. In trite, the above argument is for dismissal of the petition, it being mis-constituted.

6. However, the afore made submission before this Court, is not acceptable. The reason for rejecting the afore made submission, becomes comprised in the factum, that even though in respect of non-bailable offences, set forth in the FIR (supra), rather no inculcation becomes drawn against the person(s) concerned, in the report filed under Section 173 of the Cr.P.C., but the Committal Court concerned, after making the keenest application of mind, to all the incriminatory material, placed before it, by the prosecutor concerned, with his application cast under Section 319 of the

Cr.P.C., rather seeking the addings of person(s) concerned, as accused, alongwith other accused, who are facing trial, before him, hence may allow the application (supra). If so, and, if the offences are non-bailable, and, more so, when the offences are constituted under Section 302 of the IPC, thereupon, the summoning order, as, made upon the accused concerned, after the prosecutor's application cast under Section 319 of the Cr.P.C., becomes allowed, and, even if it is obviously post completion the investigations, therefore, resultantly rather the summoned accused would but definitely, and, bonafidely engineer an apprehension, that upon his making his appearance before the learned Magistrate concerned, there is every likelihood of his being put to custody. The above likelihood of the person concerned, does necessarily, irrespective of the fact that the investigations are complete, and, the summons are issued upon any person concerned, post the completion of the investigations, rather does constitute within the ambit of Section 438 of the Cr.P.C., a genuine and bonafide apprehension, on the part of the person concerned, qua his being arrested, in sequel to the summoning order, being made upon him, after the prosecutor's application cast under Section 319 of the Cr.P.C., becomes allowed.

7. The afore apprehension, if is genuine, and, if ultimately results in the liberty of the added accused, becoming endangered, upon, his making his appearance, before the trial Judge concerned, therefore, the protection assigned rather against the liberty of the person concerned, becoming hence not curtailed, and, as, embodied in Section 438 of the Cr.P.C., becomes available for becoming recoured, by the accused concerned.

8. Therefore, the instant petition, as, preferred by the petitioner, who became added as an accused, after the prosecutor's application cast

under Section 319 of the Cr.P.C., becoming allowed, and, has resulted in his facing trial alongwith the accused qua whom charges for an offence constituted under Section 302 of the IPC, become drawn, rather becomes well constituted, irrespective of the apposite order becoming not challenged.

9. Be that as it may, since the offences, constituted in the FIR (supra) is of a grievous, and, heinous in nature, inasmuch as, the accused alongwith other co-accused is alleged to commit the offence of murder, and, besides when the other co-accused alongwith him, have been denied the facility of regular bail. Therefore, after the appearance of the accused, before the learned trial Judge concerned, in pursuance to his being summoned, he may move an application under Section 438 of the Cr.P.C., before the learned trial Judge concerned, and, thereons the learned trial Judge concerned, shall pass lawful orders.

10. If the learned Court concerned, had earlier rejected the apposite application, yet, the learned Court concerned, shall respective of his earlier rejecting the petitioner's application cast under Section 438 of the Cr.P.C., and, rather with its after making an independent application of mind, to all the incriminatory evidence brought against the accused by the prosecution, shall make a fresh lawful decision thereons.

11. Disposed of.

April 07, 2022
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(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>