

CRM-48757-2022 in/and
CRM-M-46734-2022

-1-

202+101

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

CRM-48757-2022 in/and
CRM-M-46734-2022
Date of Decision: 15.12.2022

Naveen and others

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sandeep Kumar Yadav, Advocate
for the applicants/petitioners.

Mr. Amrik Narwal, DAG, Haryana
for the respondent/State.

Mr. Mukesh Yadav, Advocate
for the complainant.

HARSH BUNGER J. (ORAL)

CRM-48757-2022:

Present application is filed for placing on record copy of order dated 04.11.2020, passed by the Additional Sessions Judge, Rewari, as Annexure P-6.

For the reasons mentioned in the application, the same is allowed and order dated 04.11.2020, passed by the Additional Sessions Judge, Rewari (Annexure P-6) is taken on record, subject to all just exceptions.

CRM-M-46734-2022:

Petitioners seek pre-arrest bail in a case FIR No.106 dated

20.03.2020, registered at Police Sation Kasola, District Rewari, in which

they have been summoned to face trial for the offence under Section 325 IPC (Sections 307/201 added later on) in exercise of powers under Section 319 Cr.P.C.

According to the prosecution, on 20.03.2020 at about 10.30 A.M., Sachin got an intimation that his nephew Nikesh s/o Mahipal is lying in injured condition at Yogshala and upon getting such information, he and one Jitender Singh s/o Nemi Chand, resident of Gurdasmajra, reached at Vyayamshalla, where his nephew was lying in unconscious condition having blood and several injuries on his face. He thereafter managed the vehicle; took his injured nephew and reached to Virath Hospital, Rewari for treatment. Injuries have been given to Nikesh on his face and head by some unknown persons.

It is evident that petitioners have not been named in the FIR. However, investigating agency exonerated them while submitting its report under Section 173 Cr.P.C.

Upon an application being filed under Section 319 Cr.P.C. and further finding that petitioners had played active role in the alleged occurrence, the trial Court decided to summon them as additional accused under Section 319 Cr.P.C.

At the outset, learned counsel appearing for the petitioners submits that the petitioners do not intend to challenge order dated 09.09.2022, passed under Section 319 Cr.P.C., whereby petitioners have been summoned as additional accused and they shall face trial to vindicate their innocence; however, petitioners seek anticipatory bail and in support of their plea, reliance is placed upon the judgment passed in “*Baljinder*

Singh and another Vs. State of Punjab”, 2015(3) RCR (Criminal) 950.

Mr. Amrik Narwal, DAG, Haryana as well as Mr. Mukesh Yadav, Advocate, learned counsel for the complainant have opposed prayer of the petitioners on the plea that petitioners are main accused and they do not deserve the concession of anticipatory bail.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It is well settled that jurisdiction under section 438 Cr.P.C. has to be exercised by wise and careful use of discretion. In case, an accused has a reason to believe that he would be arrested for a non-bailable offence, he would be entitled to invoke the provisions of Section 438 Cr.P.C. Though, no hard and fast rule can be laid down for exercising of this power, it would be taken on facts and circumstances of each case.

Section 438 Cr.P.C. does not confer a right on such accused to be granted discretionary relief of anticipatory bail, however their plea would deserve consideration, if appearance of additional accused can be secured and the Court is satisfied that they would cooperate during the proceedings.

It is equally well settled that Article 21 of the Constitution guarantees the Right to Life and Liberty to its citizens and criminal law derives its source and sustenance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution. Thus, such additional accused, who do not intend to defy law and are ready to face trial, their plea for anticipatory bail can be considered.

It is apposite to state that at the stage of proceedings under

Section 319 Cr.P.C., some deposition of prosecution witness(s) is before the

Court and on consideration of same, additional accused are summoned and such accused are entitled to pray for the concession of anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.

A perusal of paper boook indicates that in the present case, the petitioners were found innocent during the investigation and they have been summoned on an application under Section 319 Cr.P.C. to face trial before the Court. Peitioners do not intend to challenge order dated 09.09.2022, passed under Section 319 Cr.P.C. The petitioners are not required for any investigation or interrogation purposes as they have been summoned by the Court as additional accused under Section 319 Cr.P.C. and the petitioners are only to face trial. The trial of the case will take long time and no useful purpose will be served by sending the petitioners behind bars.

Keeping in view the aforementioned facts and circumstances, and without expressing any opinion on the merit of the case, I am of the considered view that petitioners are entitled to the benefit of anticipatory bail. The petitioners are directed to appear before the trial Court on or before 30.12.2022, and on doing so, they shall be released on bail, subject to their furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Court/Illaqa Magistrate concerned.

15.12.2022
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No