

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

Sr. No.101

CRM-M-49456-2022

Date of decision : 14.11.2022

Mukesh

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Ankit Chahal, Advocate for the petitioner

Mr.Tanuj Sharma, AAG, Haryana

AMAN CHAUDHARY, J.

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail to the petitioner in case FIR No.36 dated 11.02.2022, registered under Sections 148, 149, 307 and 506 IPC and Section 25 of the Arms Act at Police Station Sadar Palwal, District Palwal.

The facts in brief as emanate from the FIR in question, which has been registered on the basis of the statement of one Garish Bhardwaj, are that on 9.2.2022 at about 11.30 pm, he alongwith one Dev Dutt Bhardwaj were going to Bhamrola Jogi to meet their friend Ravinder. They crossed a Maruti Swift car of white colour, when they reached near the Bus Stand of village Tikri Brahman, in which 4-5 persons were seen sitting with the windows of the car open and the light inside switched on. The persons finding an opportunity came out of the car while loudly shouting to shoot them and that they should not be spared. They started firing on them and

one of the bullets, hit their Fortuner Car. The assaulters started to chase them but somehow, they both managed to save themselves. They enquired at their own level from the CCTV cameras and found that the said car had been continuously roaming in the area, from which it appeared that unknown rogue persons were doing recce and looking for an opportunity in the village Tikri Brahman, to take some revenge with intention to kill them.

Learned counsel submits that the petitioner has been falsely implicated in the present case, as his named has surfaced on the basis of the disclosure statement suffered by co-accused Ashok. He further submits that there is no iota of evidence to connect the petitioner with the alleged crime and neither any role nor any injury has been attributed to the petitioner. He further submits that the co-accused has already been granted regular bail by the learned Additional Sessions Judge, Palwal, vide order dated 15.10.2022. As nothing is to be recovered and on the ground parity with aforesaid co-accused, he prays for grant of anticipatory bail.

Learned State counsel, who has put in appearance on receipt of the advance notice of the petition, opposes the prayer of the petitioner on the ground that he is a habitual offender, as he is involved in five more cases of similar nature. He submits that the recovery of the pistol used by the accused in the occurrence is yet to be effected. He submits that the custodial interrogation of the petitioner is necessary in the present case to find out the names of the other accused and also their *modus operandi*. He further submits that seeing the antecedents of the petitioner, there is a high probability of him fleeing from justice, in the eventuality of grant of

anticipatory bail.

Heard.

Though, the name of the petitioner surfaced in the disclosure statement of the co-accused but the recovery of pistol is yet to be effected. There are five more cases of similar nature pending against him.

The submission made with regard to the parity, this Court finds no substance in the same, as co-accused Ashok was arrested and thereafter, was released on bail. Moreover, the investigation in the present case is still going on and as stated, the custodial interrogation of the petitioner is necessary to unearth the truth and modus operandi of the crime.

Hon'ble The Supreme Court in “**Jai Parkash Singh vs. State of Bihar**” reported as (2012) 4 SCC 379 has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:- (i) The nature and gravity of the accusation; (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.” 8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation. xxx xxx xxx

13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. xxx xxx xxx

21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

The manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. are the factors relevant to be considered at the time of grant of bail. In the present case, the allegations made in the FIR are grave in nature. The manner in which the crime has alleged to have been committed; the fire arm used is yet to be recovered; there are cases of similar nature lodged against the petitioner; despite which, he has repeated the offence, as has been alleged, thus, it appears that there is every possibility of him fleeing from justice, in the event of grant of anticipatory bail to him. The reliance of the learned counsel for the petitioner on grant of bail to the co-accused and seeking parity thereon is misconceived, inasmuch as the co-accused had been granted bail under

Section 439 Cr.P.C., that too primarily on the ground of custody.

In view of the gravity of offence, antecedents of the petitioner and in the light of the judgment of Hon'ble The Supreme Court of India in the case of **Jai Parkash Singh** (supra), this Court is not inclined to grant concession of anticipatory bail to the petitioner. Accordingly, the present petition stands dismissed.

14.11.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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