

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49942-2022 (O&M)
Date of decision : 29.10.2022

Islam

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Rosi, Advocate
for the petitioner.

Mr. Baljeet Beniwal, Advocate
for the complainant.

PANKAJ JAIN, J. (Oral)

This is a petition under Section 438 Cr.P.C. seeking pre-arrest bail to the petitioner in FIR No.220 dated 30.05.2022, registered for the offences punishable under Sections 148, 149, 323, 379-B and 506 of IPC (Section 379-B of IPC deleted later on) at Police Station Hathin, District Palwal.

2. Counsel for the petitioner argues that in fact the petitioner has been falsely implicated in the present case as the petitioner as well as the complainant are residents of same village. However, on pointed a question as to what is the motive behind such false implication, she has no answer. It is a case wherein the complainant is alleged to have been robbed on the point of pistol while going from his work place to his house. Admittedly, co-accused were granted concession of regular bail and not pre-arrest bail.

3. In the considered opinion of this Court keeping in view the seriousness of the offence and the manner in which the same was given

effect to, the present petition does not deserve concession of pre-arrest bail. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's case vs. State of Punjab** reported as **1980(2) SCC 565**, Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail....”

4. Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant

anticipatory bail, or refuse it.”

5. As per settled law (in **C.B.I vs. Anil Sharma, 1997(7) 187**) there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be belayed.

6. The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.

7. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.

8. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case.

(PANKAJ JAIN)
JUDGE

29.10.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No