

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

**CRM-M No.53521 of 2022 (O&M)
Date of decision : 18.11.2022**

Birbal Dass & ors.

..... Petitioners

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. A.P.S.Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate
for the petitioners.

Mr. Arun Gupta, AAG, Punjab.

Mr. Sant Pal Singh Sidhu, Advocate
for the complainant.

PANKAJ JAIN, J. (ORAL)

The petitioners have prayed for grant of pre-arrest bail in FIR
No.091 dated 24.10.2022 registered under Section 306 IPC at Police
Station Bariwala District Sri Muktsar Sahib.

As per the contents of the FIR it has been alleged :-

“Stated that I am residing on the above address and I have commission agent shop in Mandi Bariwala. I have one son namely Sunny Sunil Jindal and one daughter namely Mamta, both are married. My wife Darshna Devi has died about 4 years ago. My son Sunny Sunil was married with Veenas r/o Sri Muktsar Sahib about 15 years ago. He has one son namely Arish Jindal aged 13 years. My brother-in-law Birbal Das son of Milkhi Ram r/o Ward No. 05 Mandi Bariwala has partnership firm in the name of Star Rice Mill, Warring Road, Bariwala with my son Sunil Jindal in for the last so many years. That my brother-in-law Birbal Das and his sons Viveksheel @ Vicky and Vikasdeep @ Deepa are creating problems with bad intention before my son from last 2-3 months that he should left the rice sheller after getting some money. But my son was not ready for this. Because they want to oust us without giving our full share. I had tried to

make understand to my brother-in-law and his two sons in the presence of my brother Raj Kumar that they should not put pressure upon us but they did not pay any heed to this. They threatened to my son one week earlier that they know how to oust us from the sheller. My son has told this to me and my brother Ramesh Kumar. On 21-10-2022 I was present at my house at about 6 p.m. in the evening and due to my high level B.P., I was feeling imbalance and I was resting in my bed. I made a phone call to my son Sunny Sunil and he told while weeping that his maternal uncle Birbal Das and his both sons Viveksheel Bansal @ Vicky and Vikasdeep @ Deepa have give him shove and told that before some time, he was called in the sheller and got his signatures on some blank papers and some written papers under threat of life by using pistol and weapons. I was thrown out of the seller after giving beating and insulting me. My maternal uncle and his sons told me that either you suicide yourself otherwise we will kill you and you can not enter into the sheller. I was in panic on coming to know the condition of my son and said that he should come home but he did not listen to me and continued on weeping. When my son did not come to home, I tried to meet my brother-in-law Birbal Das and he did not meet me. My family searched my son but he did not meet us. My son had with car bearing registration No. PB-30R-0022 Marka Creta at that time. That at the time of search, the same car was found parked at Rajasthan Feeder near bridge Sri Muktsar Sahib-Kotkapura road in the area of village Warring on 22-10-2022. That my uncle's son Ravinder Kumar had given information to P.S. Bariwala and made a request to search my son. Thereafter, I enquired regarding my son from my brother-in-law and his son so many times, but they did not give any satisfactory reply. Today during search, dead body of my son Sunny Sunil is found in Rajasthan Feeder near bridge Bathinda-Sri Muktsar Sahib Road which was identified by me. After taking away the dead body of my son Sunny Sunil from the canal water and bringing the same to Civil Hospital, Sri Muktsar Sahib, but before reaching the Civil Hospital, due to my critical condition, my relatives brought me to my house and dead body of my son was brought to Civil Hospital, Sri Muktsar Sahib. Birbal Das and his sons Viveksheel Bansal @ Vicky and Vikasdeep @ Deepa r/o Ward No 5 (old) Mandi Bariwala gave beating to my son and created havoc in the mind of my son and ousted him by transferring his share in their names by getting his signatures forcibly, abetted him to commit suicide.”

Learned senior counsel for the petitioners submits that it is not a case which would fall within the ambit of Section 306 IPC. He submits that from bare reading of the allegations levelled in the FIR no specific act/omission has been attributed to the petitioners which would constitute abatement as defined under Section 107 IPC and thus to allege that the petitioners are guilty of offence punishable under Section 306 IPC will be far fetched. He further submits that from circumstances on record in the form of partnership deed Annexure P-3 and further agreement executed with Punjab State Civil Supplies Corporation Limited (PUNSUP), it is evidently clear that not only the relations were cordial between the parties but rather the deceased was in the driver seat and thus to allege that petitioner No.1 had the intention to throw him out of the business which amounted to abatement of suicide is against the circumstances which have come on record. He further submits that from the CCTV footage it can be ascertained that in fact petitioners No.2 & 3 never visited the premises of the sheller on the fateful day and therefore, the allegations levelled against them are totally false.

Learned State counsel and counsel for the complainant on the other hand have argued that the fact that the deceased was humiliated by the petitioners was disclosed by the deceased to his father on the phone on the basis of which the present FIR has been lodged. The incidents as detailed out in the FIR are sufficient to bring home the guilt of the petitioners on record and thus at this stage it does not lie in the mouth of the petitioners to rely upon Annexures P-3 & P-5 and to say that there were cordial relations and there was no act of commission and omission on part of the petitioners to trigger or to abet deceased to take his life.

I have heard learned counsel for the parties and have gone through the records of the case.

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 vs. State of Punjab, 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...”

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.”

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

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

(PANKAJ JAIN)
JUDGE

18.11.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No