

CRM-M-58188-2022

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

Sr. No.101

CRM-M-58188-2022 (O&M)

Date of decision : 14.12.2022

Saif Ali @ Khanna

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr.Vikrant Guleria, Advocate for the petitioner

**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.371 dated 19.8.2022, registered under Sections 323, 324, 341, 452, 506, 148, 149 IPC at Police Station Zirakpur, District SAS Nagar.

The facts in brief as emanate from the FIR in question, which has been registered on the basis of the statement of one Jaffar Ali, wherein he stated that he is living in a joint family alongwith his brothers. On 18.8.2022, when he was present his house, his Bhabhi Hina started abusing him without any cause and started giving threats to get kill him. At about 5.00 pm when he returned back after dropping his maternal aunt and parking his car outside his house, then Hina, her brother Mehboob, brother of Hina, Khanna and two unknown persons armed with their respective weapon i.e. iron rod, kirpan, axe suddenly attacked upon the complainant and caused injuries to him. Accused Mehboob gave 3-4 blows of axe on the head and Khanna (present petitioner) gave iron rod blows on the arms and

legs and unknown persons gave stick blows to him. In the meantime, 4-5 more unknown persons had also reached there carrying punch and sticks in their hands. Then Mehboob raised a lalkara to kill him. When complainant raised alarm to save him, his brother Akbar Ali, monther Sardaro, sisters Parveen, Manju and sister-in-law Rimpi came forward to rescue him. On this, they were also caused injuries by the accused persons with their respective weapons. Thereafter, the accused took the complainant in a room where, he was given more beating and threatened to kill him. When he became unconscious, the accused left him and fled away. Thereafter, the complainant was got admitted in GMCH, Sector 32, Chandigarh.

Learned counsel submits that the petitioner has been falsely implicated in the present case being the brother-in-law of brother of the complainant. There was some matrimonial discord between his sister and her husband, who is the real brother of the complainant and his sister Hina informed the police. The complainant and his family members nursing grudge lodged the present FIR. He further submits that there is not even an iota of evidence to connect the petitioner with the alleged incident and neither any role nor injury has been attributed to him. The petitioner is ready and willing to join the investigation and will cooperate with the investigating agency.

On the other hand, learned State counsel appearing on advance notice opposes the bail petition of the petitioner on the ground that the investigation is at the initiate stage. As per the FIR, the accused had given beatings and caused injuries to the complainant and his family members. Custodial interrogation of the petitioner is necessary in the present case to

find out the names of the other accused and also to effect the recovery of the weapons used.

Heard.

The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

In the present case, the name and the role of the petitioner has been specifically mentioned in the FIR. The petitioner alongwith his co-accused gave beatings to the complainant and his family members. He has given iron rod blows to the complainant. The investigation is at initial stage and none of the accused have been arrested as yet and they are evading the process of law. The weapons including iron rod used by the petitioner are yet to be recovered and also the names of the unknown co-accused are to be revealed.

The custodial interrogation of the petitioner is necessary to unearth the truth and recover the weapons.

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.”

In the light of the judgment referred to above; the gravity of offence and the fact that weapons of offence are to be recovered and names of other co-accused are yet to be ascertained, for which the custodial interrogation of the petitioner is required, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. Accordingly, the present petition stands dismissed.

14.12.2022  
gsv

(AMAN CHAUDHARY)  
JUDGE

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