

CRM-M-59349-2022

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

Sr. No.112

CRM-M-59349-2022

Date of decision : 19.12.2022

Kaka @ Sumit

.....Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.PS Jammu, Advocate for the petitioner

Mr.Tanuj Sharma, AAG, Haryana

AMAN CHAUDHARY, J.

Prayer in the present petition filed under Section 438 read with Section 482 of the Code of Criminal Procedure, is for grant of anticipatory bail to the petitioner in case FIR No.184 dated 19.04.2021, registered under Sections 341, 323, 307, 506 IPC at Police Station City Fatehabad, District Fatehabad.

Learned counsel submits that the petitioner has been falsely implicated in the present case. During investigation, statement of the complainant was recorded wherein, he stated that the petitioner was not involved in the occurrence and on the basis of the same, the petitioner was declared innocent by the police and put in column no.2 in the final report under Section 173(2) Cr.P.C. Now on the basis of application moved under Section 319 Cr.P.C. by the complainant/ prosecution, he has been summoned by the trial Court to face the trial Court. He further submits that

no overt act has been attributed to the petitioner and both injuries suffered by the complainant were attributed to the co-accused and not to the petitioner. 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 said supplementary statement was not signed by the complainant. Moreover, in his statement dated 16.4.2021, the complainant has categorically stated that three boys on a motorcycle came and stopped in front of them in order to restrain them. In CCTV footage, it is clearly seen that out of three, two are seen giving stabbed injuries to the complainant, which were declared dangerous to life. The identity of the accused is categorically mentioned in complaint, on the basis of which the present FIR has been registered. The circumstances itself are the evidence to show the crime committed by the petitioner. Thus, he prays for the dismissal of the present petition.

Heard.

In the present case, while summoning the petitioner under Section 319 Cr.PC, PM, Juvenile Justice Board, Fatehabad has recorded that:-

“Now while making the deposition before the Board there is a categorical assertion by the complainant with regard to the role of proposed accused in the occurrence. He has stated that while stepping into the witness box as PW1 that it was the proposed accused who was driving the motorcycle and had illegally restrained him. Now, in this regard CCTV was also seen by the Board, wherein three persons are seen driving the motorcycle in

question and thereafter, two persons are seen giving stabbed injuries to complainant. The identity of the proposed accused is categorically mentioned in the initial complaint upon which the FIR was got lodged and even while deposing in examination-in-chief the version of complaint has been corroborated in toto. So at this stage, there is sufficient material before the Board to come to the conclusion that the accused Kaka @ Sumit is directly involved in the commission of offence u/s 307, 324, 341, 506 r/w 34 IPC and 25/54/59 Arms Act.”

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, 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. As per the allegations, it is in furtherance of common intention of the petitioner along with co-accused Ajju and Kannu, grievous injuries were inflicted by knife on the person of complainant-injured, two of which were declared dangerous to life. It is only based on the CCTV footage collected by the investigating agency, wherein a part of the incident had been captured and the name of the petitioner having mentioned in the initial complaint, upon which the FIR was lodged, that the petitioner has been summoned under Section 319 Cr.P.C.

In view of the facts and circumstances of the case and the judgment referred to hereinabove as also the gravity of offence, this Court is not inclined to grant concession of Anticipatory Bail to the petitioner.

Accordingly, the present petition is hereby dismissed.

19.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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