

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

CRM-M-61125-2022

Date of Decision: 30.12.2022

Gurveer Singh

..... Petitioner

Versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Munish Bhardwaj, Advocate, for the petitioner.

Mr. Ankur Bali, Addl. PP, UT, Chandigarh.

Rajesh Bhardwaj, J.

Prayer in the present petition is for the grant of anticipatory bail to the petitioner in a case FIR No.277 dated 20.10.2021, registered under Section 379 IPC at Police Station Sector-39, Chandigarh.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the FIR has been lodged by complainant Sunil Kumar on the basis of the allegations that on 25.08.2021 at about 6:00 pm, he went to the market and parked his motorcycle No.CH01BT4241 Grey BLK Colour Eng. No.37458 Chasis No.17170 Model 2018, at Sector-38 D, Chandigarh and on his return he found his motorcycle missing. He submits that the complainant lodged the present FIR two months thereafter i.e. on 20.10.2021. He submits that the conduct of the complainant in lodging the FIR after about two months is totally unreasonable. He further submits that the petitioner is not even named in the FIR. He submits that later on the Police registered another FIR No.195 dated 18.10.2021 under Section 379 IPC and the petitioner was arrested in that case. He submits that after arrest of the petitioner in FIR

No.195, the petitioner was named in the present FIR i.e. No.277. He submits

that from the facts and circumstances of the case, it is apparent that the petitioner has been falsely roped in by the Investigating Agency. He submits that the petitioner is innocent and he deserves to be granted anticipatory bail.

Learned State counsel has opposed the prayer made by learned counsel for the petitioner. He has submitted that the complainant lodged the present FIR after returning from UP and during the investigation of another case FIR No.195 dated 18.10.2021, it was revealed that the petitioner had stolen the motorcycle of the complainant, which was recovered from him. He has further stated that the petitioner is involved in other cases of the similar nature and as such he is not entitled to be granted the benefit of anticipatory bail.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that motorcycle of the complainant was stolen on 25.08.2021. As per allegations in the FIR, as the complainant belonged to UP and hence, he lodged the FIR after returning from there. Thereafter, the petitioner was arrested in another FIR No.195 mentioned above and during investigation the motorcycle of the complainant was recovered from the petitioner. The record would also show that the petitioner is involved in two theft cases and the stolen motorcycle was recovered from him.

Hon'ble the Supreme Court in State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187 has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under [Section 438](#) if the code. In a case like this

effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disintering offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs.

State of Punjab, AIR 1980 SC 1632 has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. 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. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

In the abovesaid case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual. The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and

circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner do not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

30.12.2022			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No