

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-2026-2023

Date of Decision:-27.02.2023

Jatinder Kumar & Ors.

.....**Petitioners.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Raghav Goel, Advocate for the Petitioner.

Mr. Shubham Kaushik, Assistant Advocate General, Punjab.

Mr. Vikas Kumar, Advocate for the Complainant.

JASJIT SINGH BEDI, J.

The present second bail petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail to the petitioner in case FIR No.517 dated 21.12.2022 under Sections 457, 380, 447, 506, 427, 148, 149 IPC registered at Police Station City Faridkot, District Faridkot.

2. The brief facts of the case are that the statement of Rajinder Kaur widow of Rajbir Singh was recorded to the effect that she had made some place near her house at Baba Farid School road near Abhay Dental Clinic, Faridkot to keep animals and one Mahavir was kept there for taking care of them. She (complainant) was not satisfied with his work and on account of his conduct of committing theft. Despite being stopped on number of occasions, Mahavir and his family members abused her and her

family and intimidated them. Therefore, legal action was sought against Mahavir and his family members.

During the course of enquiry it transpired that Mahavir son of Gokal Chand has been kept as servant for taking care of the horses. He was asked to leave on account of his bad conduct and he left the servant room. On 22.04.2022 when the complainant Rajinder Kaur along with her current servant Chameli Devi had gone out to meet her relatives along with her family members, Mahavir along with his family members including the petitioners who are his son in law, brother and wife broke down the lock of the premises, went inside, kept their belongings inside the rooms currently occupied by Chameli Devi, the complainant's maid and stole all her articles. When the complainant returned back from her relatives resident and asked Mahavir and his family members to vacate the room she was intimidated. In fact Mahavir had left the premises earlier and was currently residing at B-12/145-1 and had wrongly shown in civil proceedings initiated by him that he was a resident of the premises in the ownership of the complainant.

Based on the complaint and subsequent enquiry the FIR was registered.

3. The learned counsel for the petitioner contends that the petitioner no.2 is a resident in the house in question since the last 40 years in which the allegations of theft etc., have been levelled. In fact, the petitioner side itself had sent applications to the SHO on 2.5.2022 alleging that the complainant party had come into the house and committed theft. Mahavir had already instituted a civil suit for permanent injunction against the son and son in law of the complainant. The present FIR has been registered with a view to pressurize the petitioners.

4 The Counsel for the State on the other hand contends that it is the categoric finding during the course of investigation that the petitioners and their co-accused committed the offence in question. They broke open the lock of the premises of the petitioner where her maid was residing and had stolen one Colour TV, Gas Burner, Cylinder, utensils of kitchen, cot and DVD Player. The seriousness of the allegations as also the fact that the recoveries were to be effected from the petitioners and their co-accused did not entitle them to the grant of anticipatory bail.

5. The Counsel for the complainant has vehemently opposed the bail application contending that the complainant is a widow lady who has been repeatedly harassed by her because service Mahavir who had been employed to look after the family animals was attempting to usurp her property. In furtherance of his designs, the offence in question has been committed and the nature of the allegations levelled against the petitioner did not entitle them to the grant of anticipatory bail.

6. I have heard the rival contentions of both the parties.

7. The Hon'ble Supreme Court in the case of “***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***”, held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“ *It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***”.

8. In the instant case, the allegations levelled by a widow are grave. This conduct on the part of the accused including the petitioners cannot be condoned in any manner whatsoever. Even otherwise the recoveries of the stolen articles are to be effected from the petitioners and

their co-accused. Therefore, the serious nature of the allegations as also the need for custodial interrogation does not entitle the petitioners to the grant of anticipatory bail.

9. In view of the above, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 27, 2023
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>