

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

CRM-M-3418-2023 (O&M)
Date of Decision: 11.04.2023

KASHMIR SINGH AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

CRM-15458-2023

This is an application for placing on record the documents as Annexures P-4 to P-7 and also for exemption from filing certified copies of the same.

For the reasons recorded in the application, the same is allowed, as prayed for and Annexures P-4 to P-7, are taken on record, subject to all just exceptions.

CRM-M-3418-2023

Petitioners have filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.112 dated 15.05.2022, registered under Sections 323, 324, 326, 307, 342, 330, 506, 148, 149 of the Indian Penal Code (for short 'the IPC') (offence under

Section 326 of the IPC, added later on), at Police Station Kotwali Kapurthala, District Kapurthala.

2. Upon issuance of notice in this case, status report by way of an affidavit of Sh. Maninder Pal Singh, PPS, Deputy Superintendent of Police, Sub Division Kapurthala, on behalf of respondent-State of Punjab, has been filed in the Court today, which is taken on record, subject to all just exceptions.

3. Briefly, the above-said case FIR was registered on the complaint of one Amrik Singh son of Gurdev Singh resident of Village Bhullar Bet, Police Station Dhilwan, District Kapurthala, who stated that on 13.05.2022 at about 5:30-6:00 p.m., one person namely, Love, called him on phone and asked him to come and take away his articles; whereupon, the complainant along with Jagdeep Singh son of Nathu Ram, reached Village Dham to take de-addiction pills from Love. It is stated that said Love took Rs.3,800/- from the complainant and asked them to wait for five minutes. As per the complainant, he along with his friend, kept on waiting for long time but Love did not come; whereupon, he called Love on his phone, who in return asked him to come to the de-addiction Centre. It is stated that about 10:00 p.m., the complainant and Jagdeep Singh, reached at his (Love) Centre at Mudowal; however, Love was not present there and thereafter, Love called them on the phone and asked them to come to J-7 Hotel. As per the complainant, he left his companion at the Centre and he reached J-7 Hotel but Love did not meet him there also. It is stated that Love called someone at his Centre and told him to bring the boy standing there to Village Dham in his car (this is stated to have been informed to the complainant by his friend-Jagdeep Singh later that he talked with Love who had told him to come to the Village at his home in the car and thereafter,

one boy took him in his I-10 car to Village Dham at the house of Love). As per the complaint, the complainant was called by Love to his house by saying that his friend Jagdeep Singh has also reached his home. It is stated that when the complainant reached at Village Dham at their house, then already 5-6 persons were standing there along with one Dogar, who raised *lalkara* saying catch hold of him and thereafter, all the said persons took the complainant inside the Haveli, where Jagdeep Singh was already tied with a rope. It is alleged that thereafter, even the complainant was tied up with the rope and they started beating them. It is alleged that Love, Dogar sons of Anokh Singh resident of Dham, Kala, Driver residents of Village Badshahpur and Kashmir Singh, resident of Dandupur, had inflicted injuries upon the complainant with their weapons. It is alleged that Dogar attacked the complainant thrice with a sword. One blow of the sword was given towards the head of the complainant with intention to kill but the complainant raised his right arm to save himself and the blow hit on his right elbow. The second blow is also stated to have been given towards his head, which struck him near the thumb of his right hand. Third blow was given towards his legs which hit him on his right foot. It is further alleged that Love attacked the complainant with his *datar*, which hit him on his left elbow. Love gave second blow which hit him on his left wrist. Kashmir Singh is stated to have given blow with *iron pipe* which hit on the palm of the complainant's left hand. Thereafter, the driver attacked the complainant with his baseball which hit on his mouth and another hit fell on his right ankle. Thereafter, Kala attacked the complainant with his *tangli*, which hit on his stomach and his chest. It is stated that while these persons were giving beatings to the complainant and the another boy, then someone knocked at the gate; whereupon, Kashmir Singh said that someone had seen

us and then they opened up the complainant and the another boy and started making their video and forced them to say as they directed. It is alleged that as they were scared, they stated as per the wishes of the assailants and their video was also made. It is stated that the friend of complainant namely, Jagdeep Singh suffered minor injuries; accordingly, he arranged for a vehicle and got the complainant admitted to Civil Hospital, Kapurthala, where he was undergoing treatment. Accordingly, the afore-said case FIR was registered.

4. Apprehending arrest in this case, the present petitioners approached the Court of Additional Sessions Judge, Kapurthala, seeking anticipatory bail by way of filing separate applications; however, the same were rejected vide separate orders of same date i.e. 23.12.2022 (Annexures P-2 and P-3). Accordingly, the petitioners have filed the instant petition before this Court seeking anticipatory bail.

5. Learned counsel for the petitioners has submitted that the petitioners are innocent and have been falsely implicated in the present case. It is submitted that there is an un-explained delay of two days in lodging the FIR as the occurrence is stated to be of 13.05.2022 and the FIR was registered only on 15.05.2022. It is further submitted that since no injury has been declared to be dangerous to life and as such, offence under Section 307 IPC was not made out. Learned counsel for the petitioners submits that in fact, the complainant and his associate Jagdeep Singh, are habitual of committing thefts and snatching etc. and had entered the village with the intention of committing theft at the house of petitioner No.2 (Lovemanpreet Singh); however, they were caught by the villagers and later on, the complainant has coined a false story to implicate the petitioners.

Learned counsel for the petitioners submits that the anticipatory bail

applications moved by both the petitioners separately, have wrongly been rejected vide separate orders of even date i.e. 23.12.2022 (Annexures P-2 and P-3) by the Court of Additional Sessions Judge, Kapurthala. It is also submitted that the petitioners are ready and willing to join investigation as and when required by the Investigating Agency or as directed by this Court or the trial Court.

6. Per contra, learned State counsel has opposed the plea of bail sought by the petitioners on account of seriousness and gravity of the offence. While referring to the status report, learned State counsel has submitted that after the registration of the FIR, the complainant was medico legally examined vide MLR No.406/1K/CH/KPT/22 dated 14.05.2022 and as per the 'Medico Legal Report', the complainant has suffered 11 injuries on his person. Petitioner no.1-Kashmir Singh, has been attributed two injuries, out of which, one injury inflicted on little finger on left hand was sharp in nature and was declared grievous. Petitioner No.2-Lovemanpreet Singh, has inflicted two injuries on the person of the complainant, out of which, one injury which was inflicted on left wrist of the complainant, was sharp in nature and was declared grievous. Learned State counsel has further submitted that after the registration of the FIR, co-accused Gurjinder Pal Singh was arrested on 18.05.2022 and he suffered a disclosure statement that he along with petitioners has inflicted injuries on the person of complainant-Amarjit Singh with *kirpan* and he got recovered the said *kirpan* also. Learned State counsel has also submitted that as per the bail petition, petitioner No.2 is already facing trial in case FIR No.7/2020 under Section 18 of the NDPS Act, registered at Police Station GRP, Patiala. It is submitted that the custodial interrogation of the

petitioners is necessary to recover weapons used in the offence. Accordingly, prayer for dismissal of the instant petition is made.

7. I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the respondent-State of Punjab.

8. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

9. The petitioners have been specifically named in the FIR and specific role has been attributed to them that they have caused grievous injury with sharp edged weapons upon the complainant. The complainant has suffered as many as 11 injuries on his person.

10. I have gone through the FIR and am of the considered opinion that no case for grant of anticipatory bail to the petitioners is made out.

11. Custodial interrogation of the petitioners is definitely required for complete and effective investigation so as to find out how the incident was planned and executed and part played by each one of the assailants. Recovery of weapons used in the incident is also to be effected. In case, custodial interrogation of the petitioners is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

12. In *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this

interrogation of suspected person is of tremendous advantage in getting useful informations.

13. In *Jai Prakash Singh Versus State of Bihar and another etc., 2012(2) RCR (Criminal) 251*, Hon'ble the Apex Court observed that neither anticipatory bail nor regular bail can be granted as a matter of rule and the anticipatory bail being an extraordinary privilege should be granted only in exceptional cases.

14. Keeping in view the above facts and circumstances, the petitioners in the present case are not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioners in case FIR No.112 dated 15.05.2022, registered under Sections 323, 324, 326, 307, 342, 330, 506, 148, 149 of IPC (offence under Section 326 IPC, added later on), at Police Station Kotwali Kapurthala, District Kapurthala; is dismissed.

15. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

April 11, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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