

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

CRM-M-4474-2023

Date of Decision: 08.02.2023

JAIVEER SINGH @ JAIBIR AND OTHERS

...Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Suvir Sidhu, Advocate
and Mr. Mandeep Singla, Advocate
for the petitioners.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioners have filed this petition under Section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail in case FIR No.175 dated 19.08.2021, registered under Sections 120-B, 148, 149, 201, 302, 364 of the Indian Penal Code, 1860, at Police Station Bhattu Kalan, District Fatehabad (Annexure P-1).

Brief facts of the case are that the afore-stated FIR was got registered at the behest of complainant-Ajit Singh, levelling allegations that his father had expressed danger and apprehension that Bhoop Singh and others (including the present petitioners) may cause injuries to him at the time of turn of water as they had threatened to kill him. It was stated in the complaint that on 19.08.2021 in the morning, he received a call from his maternal uncle Vinod and his brother Naresh Dudi that they came to know that in the previous evening, his father Hanuman Singh went on his motorcycle to fields for irrigation purposes and at that time, two vehicles

came from village side in which Bhoop Singh Dudi son of Mani Ram Dudi, Pardeep son of Bhoop Singh Dudi, Krishan son of Maniram, Bajrang son of Krishan, Vikram son of Krishan, Chhotu Ram son of Kashi Ram, Vijay alias Molu and Dholu sons of Chhotu Ram, Rajender and Satish sons of Balbir, Jaibir and Sajjan sons of Mangeram Dudi, residents of Kirdhan were sitting. At that time, his brother Naresh Kumar son of Rameshwar, resident of Chablamori was present in their Dhani and his mother Saroj Rani was also present and they had seen abovesaid persons following Hanuman in their two cars. After about 20/25 minutes, Naresh Kumar in his car proceeded for Fatehabad and when Naresh Kumar while going on metalled road adjoining Kheri Minor crossed Moga No.10, then motorcycle of Hanuman, on which Kassi (spade) was hanging, was standing there and Naresh Kumar thought that Hanuman might have gone to irrigate the fields. He (complainant) was further informed that dead body of his father was lying in General Hospital, Fatehabad and several injuries with deadly weapons were present on the dead body and Rajender son of Balbir Singh, resident of Kirdhan brought dead body in Government Hospital as a case of road side accident, but they have suspicion that his father was murdered. Thereafter, he (complainant) along with his maternal uncle Vinod, brothers Sajjan Kumar and Naresh Kumar and other relatives reached Government Hospital, Fatehabad and when he saw dead body of his father, he found that there were various injuries on his head, arms, back and feet. From the version about water dispute as stated to him by his father and as per information of his mother Saroj and brother Naresh Kumar, they have strong suspicion that all the abovesaid persons had kidnapped his father in some vehicle and took him to some secluded place where, Bhoop Singh Dudi son of Mani Ram Dudi, Pardeep son of Bhoop Singh Dudi, Krishan

son of Maniram, Bajrang son of Krishan, Vikram son of Krishan, Chhotu Ram son of Kashi Ram, Vijay @ Molu and Dholu sons of Chhotu Ram, Rajender and Satish sons of Balbir, Jaivir and Sajjan sons of Mangeram Dudi, hatched a criminal conspiracy and they being members of unlawful assembly and in prosecution of their common object committed murder of his father with sharp edged weapons. It is further alleged that with an intention to screen themselves from legal punishment; Rajender, Satish and Bhoop Singh had kept the dead body of his father in the Government Hospital, Fatehabad by showing it a case of road side accident.

Learned counsel for the petitioners submitted that the petitioners were falsely implicated in this case, however, subsequently, the petitioners were not found present at the spot in an inquiry conducted by the Deputy Superintendent of Police, Tohana. It is further submitted that in this case, polygraph test of the petitioners were got conducted and inquiry was also conducted by Deputy Superintendent of Police and on the basis of polygraph test, call details record and inquiry of Deputy Superintendent of Police, petitioners were declared innocent and were not challaned by police.

Relevant extract of challan reads as under :-

“From the perusal of CDRs and polygraph test report, Pradeep son of Bhoop Singh, Bajrang son of Krishan Kumar and Krishan Kumar son of Mani Ram, Vijay alias Molu and Satbir alias Dholu sons Rameshwar alias Chhotu Ram and Rameshwar alias Chhoturam sons Kanshi Ram and Jaiveer and Sajjan sons of Mange Ram, residents of Kirdan were found innocent in the case, on which Sections 148/149 of the IPC were deleted and Section 34 IPC was added. Now there is no further investigation pending in the case. The supplementary challan of the case has been prepared and is being given in the Hon’ble Court.”

It is submitted that upon an application moved by public prosecutor under Section 319 of the Code of Criminal Procedure, the petitioners were summoned to face trial as additional accused vide order dated 21.12.2022 passed by learned Sessions Judge, Fatehabad.

Being aggrieved against said order dated 21.12.2022, the petitioners filed Criminal Revision bearing CRR-35-2023 before this Court, wherein, notice of motion was issued vide order dated 09.01.2023 (Annexure P-6) and the same is now pending for 17.03.2023.

Learned counsel also submits that subsequent to their summoning as additional accused under Section 319 Cr.P.C., the petitioners moved an application seeking anticipatory bail before the learned Additional Sessions Judge, Fatehabad, which was wrongly dismissed vide order dated 17.01.2023. Accordingly, prayer for anticipatory bail has been made by the present petitioner by way of filing the present petition.

Per contra, learned State counsel has although opposed the prayer for grant of anticipatory bail to the petitioners, however, he does not dispute the fact that the petitioners were found innocent by the police during investigation and they have been summoned as additional accused vide order dated 21.12.2022 passed by learned Sessions Judge, Fatehabad, on an application moved under Section 319 of the Code of Criminal Procedure.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Concededly, the petitioners were found innocent during investigation, however, they have been summoned under Section 319 of the Code of Criminal Procedure vide order dated 21.12.2022 passed by learned Sessions Judge, Fatehabad. Against the said order dated 21.12.2022, the

petitioners filed Criminal Revision bearing CRR-35-2023 before this Court, wherein, notice of motion was issued vide order dated 09.01.2023 (Annexure P-6) and the same is now pending for 17.03.2023.

Here, it would be apposite to refer to the judgment of Hon'ble the Apex Court in ***Vikas vs State of Rajasthan 2013(4) R.C.R. (Criminal) 948***. Relevant paras of judgment *ibid* are reproduced here-in-below :-

“12. The only question for consideration before us is whether in the circumstances of the case, the attendance of the appellant could have been best secured by issuing a summon simplicitor or a bailable warrant instead of a non-bailable warrant in an application under Section 319 of the Criminal Procedure Code.

13. A perusal of Section 319 of the Criminal Procedure Code would clearly indicate that on the objective satisfaction of the court a person may be 'arrested' or 'summoned' as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused. The section demands more circumspection by the Trial Court while exercising its powers since it confers an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated.

14. xxx xxx xxx

15. In order to examine the reasoning of the Trial Court, the case is to be understood in its own facts and circumstances. In the instant case, the Trial Court after

*appreciating the evidence available had reasonable satisfaction from the evidence already collected during the trial that the appellant had committed an offence along with the other accused who had undergone the Trial and therefore issued a non-bailable warrant to seek the attendance of the appellant-herein under an application of Section 319 of the Criminal Procedure Code. To appreciate the present case, it is pertinent to discuss the meaning of 'bailable offences' and the circumstances in which a non-bailable warrant can be issued. In the legislative history for the purposes of bail, the term 'bailable' and 'non-bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 of the Criminal Procedure Code. The power under Section 319 of the Cr.P.C being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are re-iterated in the case of Inder Mohan Goswami 2007(12) SCC 1 and in the case of **State of U.P. v. Poosu and Anr; 1976(3) SCC 1**,*

wherein it is mentioned that Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Criminal Procedure Code would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.”

A co-ordinate Bench of this Court in ***Baljinder Singh and another vs State of Punjab 2015(3) R.C.R. (Criminal) 950***, while considering the plea of anticipatory bail to an accused, who was summoned under Section 319 Cr.P.C., held as under :-

“7. There can, thus, be no doubt that the trial court committed no error in summoning the petitioners as additional accused in the instant case as their names figured in the FIR and specific role has been attributed to them. The question, however, remains whether they are entitled to concession of pre-arrest bail. For considering this question, principles laid down in Gurbaksh Singh Sibbia etc. v. The State of Punjab 1980 AIR (SC) 1632 need to be recalled. It was held therein that jurisdiction under Section 438 Cr.P.C has to be exercised by wise and careful use of discretion. In case an accused has a reason to believe that he would be arrested for a non bailable offence, he would be entitled to invoke the provisions of Section 438 Cr.P.C. Though no hard and fast rule can be laid down for exercise of this power, it would be taken on facts and circumstances of each case. In the case in hand,

*since petitioners have been summoned to face trial for offence under Section 302 I.P.C., on their appearance before the court, they have a reasonable apprehension that they would be taken in custody. Thus, plea for anticipatory bail is not misconceived. Article 21 of the Constitution guarantees the right to life and liberty to its citizens. Criminal law derives its source and substance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution (see **Vikas v. State of Rajasthan's** case (supra) paras 13, 14). Thus, such additional accused who do not intend to defy law and are ready to face trial, their plea for anticipatory bail can be considered, subject to the principles already laid down in Gurbaksh Singh Sibbia's case (supra). Though Section 438 Cr.P.C does not confer a right on such accused to be granted discretionary relief of anticipatory bail, their plea would deserve consideration within the available parameters. If appearance of additional accused can be secured and the court is satisfied that they would cooperate during the proceedings, their plea for anticipatory bail can be accepted. It also needs to be emphasized that at the stage of Section 319 Cr.P.C., some deposition of prosecution witness(s) is before the court and on consideration of same additional accused are summoned. However summoning under Section 193 Cr.P.C. is only on the basis of material accompanying the report under Section 173 Cr.P.C. On perusal of same, additional accused are arraigned. Thus, such accused are entitled to pray for anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.”*

In view of the above, it is noted that Section 438 of the Code of Criminal Procedure does not confer a right on an accused to be granted discretionary relief of anticipatory bail, however, its plea would deserve

consideration, if appearance of additional accused can be secured and the Court is satisfied that they would cooperate during the proceedings.

Further, at the stage of proceedings under Section 319 of the Code of Criminal Procedure, some deposition of prosecution witness(s) is before the Court and on consideration of same, additional accused are summoned and such accused are entitled to pray for the concession of anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.

A perusal of paper book indicates that in the present case, the petitioners were found innocent during investigation and they have been summoned as an additional accused on an application under Section 319 of the Code of Criminal Procedure to face trial before the Court. The petitioners are not required for any investigation or interrogation purposes as they have been summoned by the Court under Section 319 Cr.P.C and they are only to face trial. The trial of the case will take long time and no useful purpose will be served by sending the petitioners behind bars.

Considering the totality of the facts and circumstances as mentioned above, I deem it proper to dispose of this petition with a direction to the petitioners to surrender before the trial Court within a period of two weeks from today. It is further directed that in the event, the petitioners surrender and appear before the trial Court, then they be admitted to bail to the satisfaction of the trial Court. Till the time, the petitioners appear and surrender before the trial Court, no coercive steps be taken against them.

In case, the petitioners do not surrender before the trial court within the stipulated period of two weeks, this petition shall be deemed to have been dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of 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 petition.

The petition is accordingly disposed of.

February 08, 2023
Himani/gurpreet

(HARSH BUNGER)
JUDGE

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