

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

Neutral Citation No. 2023:PHHC:050606

CRM-M-4973-2023

Date of Decision: April 12, 2023

Satvir @ Satbir @ Bholu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Baljeet Beniwal, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Devender Kumar, Advocate for the complainant.

DEEPAK GUPTA, J.(Oral)

By way of this petition under Section 438 Cr.P.C. prayer is made for grant of anticipatory bail in case FIR No.228, dated 18.06.2021, registered at Police Station Sadar Ballabhgarh, District Faridabad, under Sections 148, 149, 302 of IPC and Section 25 of the Arms Act, 1959 (later on Sections 148 and 149 IPC were deleted), as the petitioner has been summoned under Section 319 Cr.P.C. to face trial as an additional accused.

FIR was lodged on the statement of Sonu S/o Jitendra, as per which on 18.06.2021 at about 4 p.m., he got information that his father Jitendra was consuming liquor along with Sandeep S/o Dalip alias Dalli; Sandeep S/o Satbir; Krishna S/o Jagdish alias Baba Ji and Jeet S/o Khajan, in a vacant land of IMT behind the Fire Brigade Station, Sector 68. When he (Sonu) along with Pradeep reached the spot to pick his father, they saw his father being attacked by Sandeep S/o Dalip alias Dalli, Sandeep S/o Satbir and Krishna S/o Jagdish with knives; whereas Jeet S/o Khajan and 3-4 unknown persons gave fists and legs blows to his father. They raised alarm, on which assailants fled away. It was

further stated by Sonu that Sandeep S/o Dalip @ Dalli had rivalry with his father for many days on some money transactions. His father had succumbed to the injuries.

It is submitted by the petitioner that he is not named in the FIR. During investigation, he besides Jeet, Sandeep and Krishna were found innocent and rather he (petitioner) was made a prosecution witness. Even his statement under Section 161 Cr.P.C. was recorded. He had joined the investigation and co-operated in the same.

No injury whatsoever was attributed to him. Despite the fact that he and the complainant are the residents of same village, he was not named in the FIR. Petitioner submits further that later on Trial Court had summoned him on an application under Section 319 Cr.P.C. He apprehends that he may be sent to custody on his appearance before the Trial Court and so has approached this Court for grant of anticipatory bail. He moved a similar application before the Trial Court, but the same was dismissed on 21.01.2023.

Learned State counsel as well as learned counsel for the complainant have opposed the bail petition by pointing out towards the gravity of the offence.

Learned counsel for the complainant also placed on record supplementary statement of complainant Sonu S/o Jitendra as Annexure A-1; and statement of said Sonu made during trial as PW1, in order to contend that in both the statements, role of the petitioner was specified.

Although no hard and fast rule has been laid down for exercise of the power under Section 438 Cr.P.C. and it depends upon the facts and circumstances of each case, but Court has to keep in mind the

general principles laid down by the Hon'ble Supreme Court in case of *“Gurbaksh Singh Sibbia etc. v The State of Punjab” 1980 AIR (SC) 1632*. Simply because offence under Section 302 IPC is involved, cannot itself be a ground to decline anticipatory bail. As observed by the Hon'ble Supreme Court in case of *“Vikas v State of Rajasthan”, 2013(4) R.C.R. (Criminal) 948*, Article 21 of the Constitution guarantees the right to life and liberty to its citizen. Criminal law derives its source and sustenance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution.

In the present case as rightly pointed out by learned counsel for the petitioner, despite the fact that petitioner as well as complainant Sonu are residents of same village Chandwali, petitioner was not specifically named in the FIR lodged on 18.06.2021. It is on 20.06.2021, i.e. after 2 days that complainant made a supplementary statement under Section 161 Cr.P.C., in which he named petitioner Bhola @ Satvir and specified his role to the effect that he had caught hold the wrists of his father and then Sandeep had given knife blow. Petitioner had joined the investigation and was found innocent. As per his contention, he was even named as a witness by the prosecution. It is only by exercising the powers under Section 319 Cr.P.C. that on the statement made by Sonu as PW1 that petitioner has been asked to face trial, by exercising the power under Section 319 Cr.P.C. The Court cannot ignore the fact that petitioner, who has been summoned as an additional accused by the Court, is not required for the purpose of investigation. Petitioner is ready to face trial and in these circumstances, his plea for anticipatory bail does not deserves to be declined.

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Having regard to all the facts and circumstances hereinabove, but without commenting upon the merits of the case, petition is accepted and the petitioner is directed to surrender before the Trial Court within 15 days from today. On his such appearance, he shall be admitted to bail by the Trial Curt on his furnishing personal bonds and surety bonds to its satisfaction.

Allowed.

April 12, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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