

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

CRM-M-6839-2023

Date of Decision: 09.02.2023

KAILASHI

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.114 dated 09.07.2018, registered under Sections 323, 506 and 315 of the Indian Penal Code, at Police Station City Phagwara, District Kapurthala (Annexure P-1), especially in the event of her appearance before the trial Court, in compliance of summoning order dated 01.06.2022 (Annexure P-4), vide which, she has been summoned under Section 319 of the Code of Criminal Procedure.

Learned counsel for the petitioner has submitted that the petitioner is an old lady of around 65 years of age and was declared innocent during investigation. However, she has been subsequently summoned under Section 319 of the Code of Criminal Procedure, vide order dated 01.06.2022 (Annexure P-4) passed by the Additional Sessions Judge, Kapurthala. It is submitted that since the FIR in question, was registered on account of a family dispute, however, subsequently with the

intervention of the respectables and other family members of the parties, the matter has been amicably resolved vide compromise/affidavit of the complainant dated 21.09.2022 (Annexures P-6 and P-7, respectively). It is further submitted that in furtherance to the aforesaid compromise between the parties, the petitioner along with others have already filed a petition bearing **CRM-M-51460-2022**, seeking quashing of FIR No.114 dated 09.07.2018, including challan/report under Section 173 Cr.P.C along with summoning order dated 01.06.2022 and all other subsequent proceedings arising therefrom, wherein, notice of motion has already been issued and the same is pending for 15.02.2023. It is next submitted that since the petitioner had been summoned under Section 319 of the Code of Criminal Procedure, accordingly, the petitioner filed an application seeking anticipatory bail before the learned Sessions Judge, Kapurthala, however, the same has been wrongly dismissed vide order dated 30.01.2023 (Annexure P-10). Learned counsel for the petitioner submits that another co-accused of the petitioner have already been granted interim bail by the coordinate Bench of this Court vide order dated 05.12.2022 (Annexure P-11) passed in **CRM-M-56172-2022**, which reads as under :-

“Learned counsel for the petitioners has submitted that the petitioners have been summoned by the learned trial Court on the basis of an application under Section 319 Cr.P.C. He submitted that the petitioners are ready and willing to surrender before the learned trial Court within a period of two weeks from today and has prayed for protection in the meanwhile. He further submitted that now a compromise has been effected between the parties vide Annexure P-8 and in view of the compromise, a quashing petition based upon compromise has also been filed before this Court in which notice of motion has been issued.

Notice of motion.

Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab accepts notice on behalf of respondent No.1 and Mr. Varinder Singh, Advocate has appeared on behalf of respondent No.2 and has filed his power of attorney which is taken on record. He prays for some time to file reply/affidavit.

In view of the undertaking given by the learned counsel for the petitioners on behalf of the petitioners that they will surrender before the learned trial Court within a period of two weeks from today, it is directed that they shall surrender before the learned trial Court within a period of two weeks from today. Till the time they appear and surrender before the learned trial Court, no coercive steps shall be taken against the petitioners. In the event of their surrendering and appearing before the trial Court, the petitioners shall be admitted to interim bail.

Adjourned to 12.04.2023.”

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 petitioner, however, he does not dispute the factum of passing of order dated **05.12.2022** passed in **CRM-M-56172-2022**.

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

Concededly, the petitioner was found innocent during investigation, however subsequently, she has been summoned under Section 319 of the Code of Criminal Procedure. A perusal of Annexures P-6 and P-7 reveal that the parties have already compromised the matter being a family dispute and even a quashing petition bearing **CRM-M-51460-2022**, has been filed, wherein, notice of motion has been issued and the same is pending for 15.02.2023. A coordinate Bench has already directed the co-

accused in this case to surrender before the trial Court and further direction has been issued that in case, they surrender then they be admitted to interim bail.

Here, it would be apposite to refer to the judgment of Hon'ble the Apex Court in ***Vikasvs 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 petitioner was found innocent during investigation and she has been summoned as an additional accused vide order dated 01.06.2022 (Annexure P-4) passed on an application under Section 319 of the Code of Criminal Procedure to face trial before the Court. The petitioner is not required for any investigation or interrogation purposes as she has been summoned by the Court under Section 319 Cr.P.C and she is only to face trial. The trial of the case will take long time and no useful purpose will be served by sending the petitioner 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 petitioner to surrender before the trial Court within a period of two weeks from today. It is further directed that in the event, the petitioner surrenders and appears before the trial Court, then she be admitted to bail to the satisfaction of the trial Court. Till the time, the petitioner appears and surrenders before the trial Court, no coercive steps be taken against her.

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 09, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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