

CRM-M-6816 of 2023

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

CRM-M-6816 of 2023
Date of decision:09.02.2023

Salim Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. S.S. Gill, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.
Mr. Prateek Sodhi, Advocate, for the complainant.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.0102 dated 31.12.2021 under Sections 302, 341, 148, 149 IPC, registered at Police Station Bhindi Saidan, District Amritsar Rural.

FIR in the present case was registered on the statement of complainant Harpreet Singh alleging therein that on 13.12.2021 at about 4:30 a.m., he along with his father Baldev Singh was going to Gurudwara Damdama Sahib, village Bhindi Aulakh by motorcycle and when they reached near water tank, village Bhindi Aulakh at that time he saw that Tarsem Masih armed with baseball, petitioner-Salim Masih armed with datar, Gopi Masih armed with datar, Ajay Masih armed with datar, Surjit Kaur empty handed came there and stopped their motorcycle. Surjit Kaur raised a *lalkara* upon which petitioner-Salim

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Masih gave datar blow which hit on the forehead of Baldev Singh, Gopi Masih gave datar blow which hit on the right eye of Baldev Singh. His father fell down on the ground. Then Ajay Masih gave datar blow on the right knee of Baldev Singh. Tarsem Masih gave baseball blows on the chest of Baldev Singh. They raised *raula* and then all the accused ran away from the spot. Baldev Singh was got admitted in the hospital but he died during treatment on 31.12.2021 due to the injuries given by the accused persons.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He further submits that the occurrence took place on 13.12.2021 and FIR was registered on 31.12.2021 and thus there is delay of 17 days in lodging the FIR. He further submits that the petitioner is ready and willing to join the investigation.

Per contra, learned State counsel, who appears on advance notice, assisted by learned counsel for the complainant opposes the prayer for grant of anticipatory bail to the petitioner on the ground that petitioner is the main accused, who gave *datar* blow which hit on the forehead of deceased Baldev Singh, therefore, his custodial interrogation is necessary.

I have heard learned counsel for the parties and perused the record.

Perusal of record shows that petitioner was armed with *datar* at the time of occurrence and he gave blow of the same on the forehead of Baldev Singh, who died lateron in hospital due to injuries

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suffered by him from the hands of accused persons, including the petitioner. There are specific allegations against the petitioner, which are serious in nature. The petitioner in connivance with other co-accused has murdered Baldev Singh and the petitioner being the main accused is not entitled for grant of pre-arrest bail.

It is also relevant to mention here that petition bearing CRM-M-35463 of 2022 filed by co-accused Surjit Kaur, who was a member of the unlawful assembly and raised *lalkara* to instigate other accused to cause injuries on the person of Baldev Singh, for grant of anticipatory bail has been dismissed by a Co-ordinate Bench of this Court vide order dated 27.09.2022.

Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011(1) RCR (Criminal) 126*** after considering its earlier judgments laid down certain factors and parameters to be considered while considering application for anticipatory bail :

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*

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iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

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123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. 124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

Hon'ble Supreme Court in ***Jai Prakash Singh v. State of Bihar and another, 2012(2) R.C.R.(Criminal) 251*** held as under: -

*"18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: ***D.K. Ganesh Babu v. P.T. Manokaran & Ors., 2007(2) RCR (Criminal) 161 : 2007(2) R.A.J. 342 : (2007)4 SCC 434; State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors., 2007(4) RCR (Criminal) 581 : 2007(5) R.A.J. 489 : (2008)1 SCC 213; and Union of India v. Padam Narain Aggarwal & Ors., 2008(4) RCR (Criminal) 665 : 2008(6) R.A.J. 10 : (2008)13 SCC 305.*"***

Hon'ble Supreme Court in ***Singashan Singh v. State of Bihar and others, 2015(1) R.C.R.(Criminal) 786*** held as under: -

*"13. In ***Jai Prakash Singh v. State of Bihar, 2012(2) RCR (Criminal) 251 : 2012(1) Recent Apex Judgments (R.A.J.) 462 : (2012) 5 SCC 690***, this Court, on a perusal of Section 438 of the Code, took note of the pre-conditions*

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to granting anticipatory bail and laid emphasis on the nature and gravity of the accusation.

*"18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: **D.K. Ganesh Babu v. P.T. Manokaran and Ors.**, 2007(2) RCR (Criminal) 161 : (2007) 4 SCC 434; **State of Maharashtra and Anr. v. Mohd. Sajid Husain Mohd. S. Husain and Ors.**, 2007(4) RCR (Criminal) 581 : (2008) 1 SCC 213; and **Union of India v. Padam Narain Aggarwal and Ors.**, 2008(4) RCR (Criminal) 665 : 2008(6) Recent Apex Judgments (R.A.J.) 10 : (2008) 13 SCC 305).*

*" 14. In the case of **Ranjit Singh v. State of Madhya Pradesh**, 2013(4) RCR (Criminal) 600 : 2013(5) Recent Apex Judgments (R.A.J.) 492 : 2013 (12) SCALE 190, the appellant therein was charged with the offences, inter alia, under Section 34 and Section 302 of the IPC. While discussing the power to grant bail by the Court, this Court stated that:*

" ...It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course."

*Furthermore, this Court, in the aforesaid case, took notice of **Chaman Lal v. State of U.P.**, 2004(3) RCR (Criminal) 984 : (2004) 7 SCC 525; **Prasanta Kumar Sarkar v. Ashis Chatterjee**, 2010(4) RCR (Criminal) 909 : 2010(6) Recent Apex Judgments (R.A.J.) 317 : (2010) 14 SCC*

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496; Ash Mohammad v. Shiv Raj Singh and Anr., 2013(1) RCR (Criminal) 277 : 2012(6) Recent Apex Judgments (R.A.J.) 361 : (2012) 9 SCC 446; and Central Bureau of Investigation v. V. Vijay Sai Reddy, 2013(3) RCR (Criminal) 252 : 2013(3) Recent Apex Judgments (R.A.J.) 718 : 2013 (7) SCALE 15 to show that, *inter alia*, the nature and gravity of the accusation is one of the primary factors to be borne in mind while considering any application for bail.

15. This Court has time and again held that neither anticipatory bail nor regular bail can be granted as a matter of rule. Sections 438 and 439 of the Code substantially embody the same principle so far as appreciation of the case as to whether or not a bail is to be granted. The judicial discretion vested in the Court requires to be appropriately exercised with proper application of mind in determining whether a case is a fit case for grant of anticipatory bail or not. The 41st Report of the Law Commission of India recommended the introduction of a provision for grant of anticipatory bail has observed that "power to grant anticipatory bail should be exercised in very exceptional cases". It should only be exercised in exceptional cases when the court is satisfied that the person to be enlarged on anticipatory bail would not misuse his liberty.

16. It is trite that in crimes of heinous nature, unless the Court is *prima facie* satisfied, based on the material available on record, that an exceptional case is made out by the accused person so as to conclude that he would not interfere with the process of law, the Court may consider granting anticipatory bail."

Therefore, considering the nature of the allegations contained in the FIR, the custodial interrogation of the petitioner is

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necessary to excavate the truth, which are serious in nature. Hence, the petitioner does not deserve the concession of anticipatory bail.

In view of the above, the present petition is dismissed.

09.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No