

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CRM-M-7167-2023
Date of decision: 10.02.2023

AVTAR SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Navkiran Singh, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Mr. Rakesh Kumar Girdhar, Advocate
for the complainant.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 CrPC for grant of pre-arrest bail to the petitioner in case FIR No.126 dated 22.08.2022, under Sections 307, 323, 325, 326, 148, 149 IPC and Sections 25, 27 of the Arms Act, registered at Police Station Verowal, District Tarn Taran.

Briefly put, the facts of the case are that the present FIR has been registered at the instance of complainant Swaran Singh son of Joginder Singh who stated that he alongwith one Jaimal Singh s/o Ajit Singh, village Pididi, Jaswant Singh s/o Sadhu Singh, village Koti Saru Khan and four other labourers were going to his fields at about 1.00 p.m. and when they were about 200 feet away from their fields and were to pass the tractor from the fields of Bakhshish Singh, in the meantime, Avtar Singh, armed with

Rifle and Makhan Singh, armed with Revolver and stick (dang) both sons of Satnam Singh, Nirmal Singh s/o Jaswant Singh armed with double bore rifle, Sukhdev Singh s/o Arjan Singh, Dharminder Singh s/o Gurmeet Singh, Ghudda s/o Nirmal Singh, all armed with sticks (dangs), Shingara Singh s/o Satnam Singh armed with sword, Jobanjeet Singh and Lovepreet Singh ss/o Avtar Singh @ Taari, both armed with their respective sotta, Avtar Singh alias Taari s/o Puran Singh armed with sotta and three youngsters accompanies accompanying them holding sticks and batons (dangs and sottas) came there. Sukhdev Singh raised a lalkara loudly that catch hold of them, today Swaran Singh (complainant) and his accomplices may not go scot free and they be taught a lesson to set up a garden in their fields. Avtar Singh, with an intention to kill, fired a direct shot from his double barrel rifle and shrapnel of the shot hit in-outside of his left hand and on the left side of nose of Jaimal Singh, thereafter, Avtar Singh fired second shot upon them, which hit on the right side of forehead of Jaimal Singh. they raised a noise 'maar ditta, maar ditta', then assailants armed with their respective weapons chased them and gave sticks blow on his left leg and behind left arm. They saved their lives by running from there. Thereafter, one Jaswant Singh by arranging the vehicle took them to Guru Nanak Hospital, where they were treated.

Learned counsel submits that both injuries suffered by the Jaimal Singh are circular burnt wounds and cannot be confirmed to be pellet injuries. The allegations against the petitioner of having fired from his rifle directly at Swaran Singh and Jaimal Singh do not find corroboration from the impact of the injuries No.1 and 3 on Jaimal Singh, reportedly received near his nose and forehead. There is a delay of more than 28 hours in

lodging the FIR. There are 4 FIRs and 1 DDR against the injured Jaimal Singh, who is thus a habitual criminal. There are civil proceedings pending inter se the parties.

On the other hand, learned counsel for the State assisted by learned counsel for the complainant state that Metallic foreign body is still lying in the body of the injured. The petitioner armed with double barrel point .12 bore gun had fired two gun shots directly towards the complainant and injured with the intention to kill. Custodial interrogation of the petitioner is very much required in the case and even the firearm used is to be recovered from the petitioner, who is involved in 3 other criminal cases i.e. FIR No.8 dated 11.11.2017, under Section 447 IPC at Police Station NRI Amritsar; FIR No.81 dated 28.06.2018, under Sections 323, 324, 326, 295, 379, 148, 149 IPC and Sections 25 and 27 Arms Act at Police Station Verowal, District Tarn Taran and FIR No.13 dated 25.01.2019, under Sections 420, 467, 468, 471, 120-B IPC at Police Station Goindwal Sahib, District Tarn Taran. There is a possibility of influencing of witnesses and fleeing from justice.

Heard.

It is apposite to note that in the present case the in the incident, which is alleged to have taken place during broad daylight at 1 PM, the petitioner armed with a double barrel point .12 bore gun and other co-accused armed with their respective weapons, were present at the spot of occurrence. The petitioner fired at the complainant and the injured, which hit the left hand of the complainant and on the left side of nose of Jaimal Singh. The second shot fired by him them, hit on the right forehead of

Jaimal Singh. In the order passed by learned Additional Sessions Judge declining the application of the petitioner, the following has been noticed:

“Also it is mentioned in the MLR that it has been mentioned that as per the report of NCCT head and face, surgical opinion and surgical notes, head and face of injured Jaimal shows high density rounded radio dense metallic foreign body of HV3071 with streak artifact in the subcutaneous tissue of right temporal region approximately 4 cm above the Zygomatic arch and measures up to 4 mm. Similar radio dense foreign metallic body of similar HV3071 seen in the nasal septum with streak artifact and one is seen lateral to the left nasal bone with underlying fracture of left nasal bone. Hence, injury no.3 is grievous in nature. These injuries on the face and head of Jaimal Singh injured are attributed to the applicant. It is submitted that on foreign body has been sent for ballistic expert opinion and other metallic foreign body is still lying in the body of the injured.”

Hon'ble The Supreme Court in “**Jai Parkash Singh vs. State of Bihar**” reported as (2012) 4 SCC 379 has held thus:

“7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-

(i) The nature and gravity of the accusation;

(ii) The antecedents of the applicant including the fact as to whether he 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; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so

arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

The manner in which the crime is committed, gravity of the offence, age, the nature of weapon used, seat of injuries, type of injuries, number of injuries, antecedents of the petitioner etc. being the factors relevant to be considered.

Considering the facts and circumstances of the case, gravity of offence there being specific allegations against the petitioner that he has fired two shots from a double barrel point .12 bore gun causing injuries

reflected in the medical evidence; he is stated to be involved in three more criminal cases; there being apprehension of his influencing the witnesses and fleeing from justice; the weapon(s) yet to be recovered; custodial interrogation is required for thorough and effective investigation, this Court finds no ground to grant the concession of anticipatory bail to the petitioner.

Accordingly, present petition is dismissed.

Needless to say that observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

February 10, 2023
S.Sharma(syr)/GSV

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