

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-7498-2023
Date of decision: 13.02.2023

Gurmukh Singh

....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amol Rattan Sidhu, Sr.Advocate with
Mr.Pratham Sethi, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab

Mr.Vipin Mahajan, 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.0169 dated 29.11.2022, under Sections 302, 307, 427 IPC and Sections 25 and 27 of the Arms Act, registered at Police Station Sadar Batala, District Gurdaspur (Batala).

Learned counsel submits that the petitioner has been falsely implicated in the present case on the basis of the disclosure statement of Amritpal Singh, who earlier was the complainant. No role has been attributed to him. Main accused Amritpal Singh, who had committed the murder of Ajitpal Singh has already been arrested. Nothing is to be

recovered from the petitioner as the weapon of offence has already been recovered. The petitioner is ready and willing to join the investigation.

On receipt of advance notice, learned State counsel has put in appearance and with the assistance of learned counsel for the complainant opposes the bail petition of the petitioner on the ground that it is case of murder by Amritpal Singh in collusion with the petitioner. They both in connivance with each other have tempered with the spot of occurrence, tried to destroy the evidence and cooked up a false story to mislead the investigating agency. The investigation in the present case is going on. The custodial interrogation of the petitioner is very much required in the case to find out the real truth and the modus operandi of committing the crime. He further submits that there is every possibility of tempering with the evidence, influencing the witnesses and fleeing from justice.

Heard.

It is a case of murder. Co-accused Amritpal Singh in his disclosure statement has specifically stated that he in collusion with the petitioner had killed Ajitpal Singh by firing shot from the pistol at the restaurant owned by the petitioner. Thereafter, they concocted a story in order to cover up the said crime, in order to save themselves from criminal prosecution. They tried to mislead the investigating agency by lodging the FIR in question by spinning a yarn that one Hindu man came out of a car with muffled face and with intention to kill fired a shot with a revolver, which hit on the left cheek of the deceased and that a shot was also fired at him, whereas, as a matter of fact they themselves had fired two shots on the front wind shield of the car and one shot towards driver side of the car,

though in fact, the occurrence had taken place inside the restaurant of the petitioner and they had cleaned up the said area and had put the deceased in the car. In the application filed by the SHO for seeking judicial remand of co-accused Ajitpal Singh, it has been categorically mentioned that the CCTV footage of the camera installed at the adjoining shop of Hub 24 Restaurant has been taken into possession in a pen driver alongwith the DVR, wherein two persons are seen picking up another person and loading him in a swift car.

Furthermore, while declining the bail application of the petitioner, the learned Sessions Judge, has specifically recorded that “during the course of hearing on the instant application it has transpired that though there is specific allegation of tampering with the material evidence available on the spot of occurrence by the accused, yet the police has not invoked the provisions of Section 201 IPC in this case so far. It seems that the Investigating Officer has adopted a casual approach. A copy of this order be sent to the Senior Superintendent of Police, Batala, so as to bring the matter to his notice.”

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, conduct, age, criminal antecedents, impact on public confidence in the justice-delivery system, etc. are the factors relevant to be considered at the time of grant of bail.

Considering the allegations made in the FIR, which are grave in nature; the manner in which the crime is alleged to have been committed; conduct of the petitioner; there being every possibility of influencing the witnesses and tampering the evidence; the investigation is going on; the custodial interrogation is required for thorough and effective investigation to unearth the truth and the parameters laid down in the case of **Jai Parkash Singh** (supra), this Court is not inclined to grant concession of anticipatory bail to the petitioner.

Accordingly, the present petition stands 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 13, 2023
Gsv/mk

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