

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

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CRM-M-7877-2023
Date of decision: 24.02.2023

KARNAIL CHAND

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

Mr. Anurag Arora, Advocate for the complainant.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No.197 dated 27.11.2022, registered under Sections 323, 324, 326, 307, 506, 34 of the Indian Penal Code, 1860 at Police Station Adampur, District Jalandhar (Rural).

Briefly put the facts are that complainant-Gurpreet son of Birbal has got registered the FIR with the allegations that on 17.11.2022, at about 6:20 p.m., when he was going to his house after closing his shop, then Gurdeep Chand @ Ajju and Vipin Kumar, sons of Karnail Chand resident of Village Mansurpur and Karnail Chand came armed with their respective weapons. Gurdeep Chand raised lalkara that he be taught a lesson, then Karnail Chand gave a spade blow on his head with an intention to kill him, which hit on the right side of his forehead and he fell down on the ground. Vipin Kumar gave kick blows in his abdomen and back. When the

complainant raised hue and cry, Ram Lubhaya and Surinder Pal came there and other people also gathered on the spot. On seeing them, the accused fled the spot alongwith respective weapons and he was rushed to Civil Hospital at Adampur.

Learned counsel submits that due to party faction, the petitioner has been falsely implicated in the present case. The FIR has been lodged by the complainant against the petitioner and his sons after a delay of 10 days of the occurrence. The petitioner has also suffered injuries. Thus, he prays for grant of anticipatory bail to the petitioner.

On receipt of advance notice, learned State counsel assisted by counsel for the complainant, opposes the petition on the ground that the injury on the head of the complainant has been found dangerous to life, investigation is going on and weapon is yet to be recovered, thus, custodial interrogation of the petitioner is required. There is every possibility of the petitioner tampering with the evidence and threatening the complainant as also the witnesses.

Heard.

It is apposite to make a reference to the judgment of Hon'ble The Supreme Court in the case of '**Jai Parkash Singh vs. State of Bihar**' reported as (2012) 4 SCC 379, wherein it was held thus:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

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.”

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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, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

There being specific allegations by the complainant-Gurpreet Singh against the petitioner; injuries alleged to be caused with a spade on the head of the complainant; found as per CT Scan to be a depressed fracture of the right parietal bone with bony fragments and declared dangerous to life and other injuries caused are found to be grievous in nature.

The parties, living in the same vicinity, the possibility of the petitioner threatening the complainant and influencing the witnesses cannot be ruled out and recovery of weapon is stated to be effected, for which the custodial interrogation is required as also for thorough and effective investigation of the crime committed.

Considering the peculiar facts and circumstances as discussed above, this Court finds no ground to grant anticipatory bail to the petitioner.

Accordingly, present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

February 24, 2023

M.Kamra

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No