

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(103)

CRM-M-9587-2023

Date of Decision: 23.02.2023

Barinder Singh @ Varinder

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. K.S. Rathour, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.108 dated 27.10.2022 under sections 436, 427, 506, 34 I.P.C, registered at Police Station, Kiratpur Sahib, District Rupnagar.

As per factual matrix, the FIR in question was registered on the complaint of Manoj Bawa, wherein it was alleged that he was running a shop under the name of New Bedi Furniture House. On 24.10.2022, Iqbal Muhammad @ Pala along with his wife came to his shop in the evening. Iqbal Muhammad asked him to give the furniture on installments for which he refused. Iqbal Muhammad got enraged with the same and thereafter he along with Varinder i.e. the present petitioner came on motorcycle which was being driven by Varinder and Iqbal Muhammad was riding the pillion. They stopped the motorcycle in front of his shop and then Iqbal Muhammad holding a bottle of petrol threw it on the furniture lying at his shop and set the same on fire. The Innova vehicle no. PB-1244-7000 parked near the shop caught fire. On his raising alarm Iqbal Muhammad ran away with his partner riding on the motorcycle. The incident was recorded in the CCTV

Camera installed at his shop. A request was made to take legal action against the culprits.

On the basis of FIR, the investigation commenced and apprehending arrest, petitioner approached the court of learned Addl. Sessions Judge, Rupnagar for grant of bail, however, after hearing the parties, the same was declined vide order dated 13.12.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in this case. He submits that from the reading of the allegations made in the FIR no cognizable offence is made out against the petitioner. He submits that petitioner has no criminal antecedents and hence in the facts and circumstances of the case he may be granted the benefit of anticipatory bail.

I have heard learned counsel for the petitioner at length and have gone through the records carefully.

From the allegations made in the FIR, it is apparent that petitioner and the co-accused both are specifically named in the FIR. As per the allegations petitioner was driving the motorcycle, whereas co-accused Iqbal Muhammad was riding the pillion. Both of them came prepared in the shop and Iqbal Muhammad threw petrol in the shop as a result the Innova vehicle parked near the shop of the complainant caught fire. The occurrence was also recorded in the CCTV Camera installed at the shop of the complainant. After throwing the petrol and setting the furniture on fire both the accused escaped from the spot on a motorcycle being driven by the petitioner.

Hon'ble the Supreme Court in *State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187* has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in *Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632* has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that

*anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in **State v. Captain Jagjit Singh (1962) 3 SCR 622**, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence,

chances of accused tampering with the evidence and probabilities of fleeing

from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

23.02.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No