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

CRM-M-11867-2022

Date of Decision: 22.03.2023

SATWINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Nikhil Ghai, Advocate
and Mr. Shubham Mangla, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab
for the respondent-State.

Ms. Vibhuti Naraina, Advocate
for the complainant.

HARSH BUNGER, J.

Petitioner-Satwinder Singh has filed this petition under section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail in case FIR bearing No.173 dated 11.10.2020 (Annexure P-1), under Sections 302, 506, 148, 149, 120-B of the Indian Penal Code and Section 25 and 27 of Arms Act, 1959 registered at Police Station Sadar Bhikhiwind, District Tarn Taran.

Succinctly, the abovementioned FIR was registered on the statement of complainant Danesh Kumar son of Paramjit Kumar, resident of Khalra Mandi, Police Station Khalra, District Tarn Taran, who stated that on 11.10.2020 at about 06:00/07:00 p.m., he alongwith Mandeep Kumar alias

Monu son of Paramjit Kumar (brother-in-law of complainant) was sitting on

the petrol pump-Raj Kumar Brothers Petrol Pump, Khem Karan Road. Paramjit Singh son of Tirath Ram, brother of the father-in-law of complainant and one Deepak Kumar son of Vijay Kumar (employee of petrol pump), were also sitting on the petrol pump at that time, when petitioner-Satwinder Singh (mentioned as Satinder Passi in the FIR) armed with .315 bore rifle, Gurpreet Singh alias Gopi son of petitioner armed with pistol, Charanjit Singh son of petitioner armed with 12 bore riffle, Harbhajan Singh son of Banta Singh armed with 12 bore rifle, Surjit Singh son of Harbhajan Singh armed with *datar* alongwith 15-20 unidentified armed persons came at the passage adjoining the petrol pump, regarding which there was a dispute between the parties. It is stated that when complainant, alongwith Mandeep Kumar alias Monu, moved forward then Gurpreet Singh alias Gopi fired a direct shot from his pistol at Mandeep alias Monu which hit in his right flank and Mandeep alias Monu fell down. Gurpreet Singh alias Gopi, alongwith assailants fled away from the spot with their respective weapons while firing shots and giving threats. Complainant alongwith Deepak Kumar arranged for a vehicle and took Mandeep Kumar to Dhawan Nursing Home Hospital, Bhikhwind, where Mandeep Kumar was declared dead. As per the FIR, the motive behind the occurrence was alleged to be a dispute with respect to passage adjoining the petrol pump, which leads to the colony, wherein 16 feet area belongs to the complainant, but the petitioner claimed the same to be his ownership. The said dispute led to the murder of Mandeep Kumar.

Upon issuance of notice in this case, a status report has been filed on behalf of State of Punjab.

Learned senior counsel for the petitioner submits that it is a case of version and cross version. He submits that a civil litigation is pending between the parties regarding a path and the Civil Court had directed the parties to maintain *status quo* regarding possession of the suit property and on the day of occurrence, the complainant party had entered into the land in possession of the accused party and caused injuries to them. He submits that the complainant party was the aggressor. Learned senior counsel for the petitioner has stated that as per post mortem report, only one injury with gun shot was detected on the body of deceased Mandeep @ Monu for which six persons were implicated. He submits that out of six persons, three persons (Surjit Singh @ Vicky, Jasbir Singh and Charanjit Singh) were found innocent during investigation/inquiry. In this regard, he has referred to Enquiry Reports (Annexure PX-1 and PX-2). Learned senior counsel submits that the role of the petitioner is similar to the co-accused who have been found innocent. He submits that the petitioner did not do any overt act during the alleged occurrence. Learned senior counsel for the petitioner submits that the bail of the petitioner has been wrongly declined by the trial Court whereas the petitioner is ready to join the investigation as and when directed to do so; accordingly, prayer for grant of anticipatory bail is made.

Per contra, learned State counsel as well as the counsel for the complainant have opposed the prayer of the petitioner for grant of anticipatory bail on the ground of gravity of the offence wherein Mandeep @ Monu lost his life. It is submitted that the petitioner alongwith his accomplices armed with deadly weapons had committed the heinous crime by murdering Mandeep @ Monu. They have referred to the Post Mortem

Report which states that the right kidney of the deceased was crushed into pieces and Mandeep @ Monu died within few minutes after suffering firearm injury. They have stated that name of the petitioner is specifically mentioned in the FIR and he is also stated to be armed with .315 bore rifle and specific allegations of firing shots and extending threats have been made. It is submitted that the presence of petitioner is not disputed, rather as per the complaint (Annexure P-5) filed by Gurpreet Singh, the presence of petitioner at the time and place of occurrence is admitted. Learned State counsel while referring to para Nos. 8, 9 and 10 of the status report have submitted that the cross case registered against the complainant party vide DDR No. 41 dated 20.05.2022 under Sections 452, 295, 323, 506, 427, 148, 149 of IPC and Sections 25, 27 of Arms Act, has been cancelled. It is submitted that the petitioner has been intentionally hiding himself for the last more than two years and police have initiated proceedings under Sections 82/83 of the Code of Criminal Procedure against the petitioner and after completion of further investigation, supplementary report under section 173(8) of Cr.P.C. will be presented before the trial Court. Para Nos.8, 9 and 10 of the Status Report reads thus :-

“8. That it is submitted that during the course of investigation, the FSL report pertaining to the weapon i.e. country made pistol recovered in the present case has been received and according to the said report, the weapon i.e. pistol is in working condition and after completion of investigation, the supplementary report under Section 173(8) of Cr.P.C has also been presented before the learned Trial, Tarn Taran 13.09.2021.

9. That it is pertinent to mention here that during the course of investigation, one Charanjit Singh son of Satwinder Singh, resident of Bhikhiwind moved a representation bearing

No.11-FRPC dated 11.01.2022 before the office of Deputy Inspector General of Police, Ferozepur Range for the purpose of registering the cross case in the present case and the Deputy Inspector General of Police, Ferozepur Range marked the same to the Station House Officer, Police Station Bhikhiwind for the purpose of conducting enquiry and the then Station House Officer, Police Station Bhikhiwind has conduct enquiry pertaining to the said representation and after conducting enquiry, the enquiry officer has registered the cross case DDR No.41 dated 20.05.2022, under Sections 452/295/323/506/427/148/149 of IPC & 25/27 of the Arms Act against Danesh Kumar alias Tinku, Mandeep Kumar alias Mannu son of Paramjit Kumar, Paramjit Kumar son of Tirath Ram, Deepak Kumar alias Goldy son of Vijay Kumar, Anmol son of Danesh Kumar, Deepak Kumar son of KewalKrishan Singh, Amandeep son of Subash Sharma, Narayan Sharma son of Danesh Kumar, residents of Khalra and Baljeet Singh son of Mahanta Singh, resident of Narli and the investigation of the cross case has been conducted by the Deputy Superintendent of Police, Sub Division Bhikhiwind, District Tarn Taran and during the course of investigation, the investigating officer found that the occurrence has not been found to be committed in the present cross case and the investigating officer recommended to cancel the cross case registered in the present case and the findings of the investigating officer were duly approved by the then Senior Superintendent of Police, Tarn Taran vide order dated 22.06.2022 and the cross case DDR No.41 registered in the present case has been cancelled.

10. That it is submitted that during the course of further investigation, the regular raids are being conducted by the local police in order to apprehend the petitioner namely Satwinder Singh Passi as well as co-accused namely Harbhajan Singh but they have intentionally hide themselves and could not be arrested despite of strenuous efforts made by the local police and seeing no other alternative, the local police has initiated

the proceedings under Section 82/83 of Cr.P.C against the petitioner namely Satwinder Singh Passi as well as co-accused namely Harbhajan Singh and after completion of proclamation proceedings and after completion of further investigation, the supplementary report under section 173(8) of Cr.P.C will be presented before the learned Trial Court at the earliest.”

It is submitted that a *country made pistol* was recovered in this case and petitioner is also alleged to be armed with .315 bore rifle, thus his custodial interrogation is required for complete and effective investigation and also to find out as to from where the illegal arms were procured. It is further submitted that in case the petitioner is extended the benefit of anticipatory bail then there is likelihood that he may tamper with the prosecution evidence. Accordingly, it is urged that the petitioner does not deserve the concession of anticipatory bail and thus the instant petition may be dismissed.

I have heard, learned counsel for the petitioner, learned State counsel as well as the counsel for the complainant, besides going through the paper-book and also the status report submitted on behalf of the State of Punjab.

The provisions of Section 438 of the Code lays down the comprehensive guidelines for consideration of the Court while granting or refusing anticipatory bail. The relevant extract of the said provision reads 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 cognisable 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.”*

In ***Jai Prakash Singh v. State of Bihar, 2012(2) RCR (Criminal) 251***, the Hon'ble Supreme Court, on a perusal of Section 438 of the Code, took note of the pre-conditions to granting anticipatory bail and laid emphasis on the `nature and gravity of the accusation, by observing 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..."

In the case of ***Ranjit Singh v. State of Madhya Pradesh, 2013(4) RCR (Criminal) 600***, 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, the Hon'ble Apex 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."

It is now well settled 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.

In the instant case, the offence alleged against the petitioner herein is heinous in nature punishable under Sections 302, 506, 148, 149, 120-B of Indian Penal Code and Section 25, 27 of Arms Act, 1959. The allegations trace the act of petitioner and his accomplices to land dispute between the complainant party and the accused persons (including the petitioner). Petitioner is specifically named in the FIR and he is also stated to be armed with .315 bore rifle and specific allegations of firing shots and extending threats have been made. Presence of petitioner at the time and place of occurrence is not disputed.

Concededly, the FIR in question was lodged promptly on 11.10.2020 at 10:10 p.m., within a period of three hours from the time of incident i.e. 06:00/07:00 p.m. Promptness in filing the FIR gives certain assurance of veracity of the version given by the informant/complainant. It is well settled that the FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The promptness in lodging the FIR is an assurance regarding truth of the informant's version.

A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

In the FIR, complainant Danesh Kumar has *inter alia* stated thus-

"...on 11.10.2020 at about 06:00/07:00 PM, he alongwith Mandeep Kumar alias Monu son of Paramjit Kumar (brother-in-law of complainant) was sitting on the petrol pump, namely, Raj Kumar Brothers Petrol Pump, Khem Karan Road. Paramjit Singh son of Tirath Ram, brother of the father-in-law of complainant and one Deepak Kumar son of Vijay Kumar (employee of petrol pump), were also sitting on the petrol pump at that time, when Satinder Passi armed with 315 bore rifle, Gurpreet Singh alias Gopi son of Satinder Passi armed with pistol, Charanjit Singh son of Satinder Singh Passi armed with 12 Bore riffle, Harbhajan Singh son of Banta Singh armed with 12 Bore rifle, Surjit Singh son of Harbhajan Singh armed with Datar alongwith 15-20 unidentified armed persons came at the passage adjoining the petrol pump, regarding which there was a dispute between the parties..."

"...when complainant, alongwith Mandeep Kumar alias Monu, moved forward then Gurpreet Singh alias Gopi fired a direct shot from his pistol at Mandeep alias Monu which hit in his right flank and Mandeep alias Monu fell down. Gurpreet Singh alias Gopi, alongwith assailants fled away from the spot with their respective weapons while firing shots and giving threats..."

The abovesaid statement would indicate that the group including the petitioner who is the accused in the abovesaid case FIR No. 173 dated 11.10.2020 (Annexure P-1) and is seeking anticipatory bail; was also armed with firearm when they had gone to the said spot where the incident

occurred. The cross case registered against the complainant party vide DDR No. 41 dated 20.05.2022 under sections 452, 295, 323, 506, 427, 148, 149 of IPC and section 25, 27 of Arms Act, has been cancelled. As per Status Report filed by State of Punjab, a *country made pistol* was recovered in this case and petitioner is also alleged to be armed with .315 bore rifle. The occurrence led to loss of human life. Therefore, if all these aspects are considered, the allegations are of serious nature which would require a detailed investigation and recovery of weapons in the course of investigation. Thus, custodial interrogation of the petitioner is very much necessary for complete and effective investigation and if the same is denied to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, thus adversely affecting the case.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed as follows:-

"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 ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

Further, the learned Sessions Judge, Tarn Taran had rejected the application of petitioner herein for grant of anticipatory bail on 07.10.2021 and the conduct of the petitioner is such that he is evading arrest for the last more than two years. Such conduct of the petitioner creates reasonable apprehension in the mind of Court in respect of his *bona fides* and indicates his non-cooperation in the process of law.

The apprehension expressed by the State counsel that in case he is granted pre-arrest bail, there are reasonable chances of his trying to tamper with the prosecution evidence cannot be brushed aside lightly.

Pre-arrest bail is a discretionary relief and it is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and any inconvenience and not to screen the culprits from custodial interrogation. No exceptional circumstances have been put forth by the petitioner, so as to enable this court to form a *prima facie* opinion that the petitioner has falsely been implicated.

In view of the above discussion, the present petition under Section 438 Cr.P.C. filed by petitioner seeking grant of anticipatory bail in case FIR No. 173 dated 11.10.2020 (Annexure P-1), registered under Sections 302, 506, 148, 149, 120-B of Indian Penal Code and Section 25, 27 of Arms Act, 1959, at Police Station Sadar Bhikhiwind, District Tarn Taran; is accordingly dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently

of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

March 22, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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