

CRM-M-12044-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12044-2023
Reserved on: 25.04.2023
Pronounced on: 17.05.2023

Ashok Bhatia alias Ashok Kumar Bhatia ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mohan Singh Chauhan, Advocate for the petitioner.

Mr. Virat Rana, AAG, Punjab.

Mr. Saurav Bhatia, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
38	22.08.2022	Pojewal, District SBS Nagar	302/34 IPC and Sections 27/30 of Arms Act

1. The petitioner apprehending arrest in the FIR captioned above, on the allegations of shooting the complainant's father dead by firing at a point-blank range, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner’s counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. State’s counsel opposes the bail.The contention on behalf of the complainant is that the petitioner was inimical to the deceased and family was afraid of any serious action, and eventually petitioner shot him dead, and is not entitled to any bail.

REASONING:

5. It shall be appropriate to refer to the prosecution's case from its reply dated 20-03-23, which read as follows:

“.....Complainant Rohit Kumar (son of deceased) present in the hospital, got recorded his statement to the Station House Officer,

alleging therein that on 22.08.2022 at about 05:30 PM. be along with his mother Santosh Devi was present at their house and his father-Hem Raj had reached home after fetching fodder for cattle and petitioner-Ashok Bhatia @ Ashok Kumar Bhatia called his father and when his father come out of his house then petitioner-Ashok Bhatia @ Ashok Kumar Bhatia, put his revolver near the left temple of his father-Hem Raj and fired from it and his father fell down. It was further alleged by the complainant-Rohit Kumar that he along with his mother raised alarm for help and rushed towards his father and then petitioner-Ashok Bhatia along with his companion Babbu @ Balwinder Kumar, who was standing behind the gate, fled away towards his house while carrying his revolver and Complainant-Rohit Kumar took his injured father to civil hospital, Balachaur, by arranging a vehicle, where his father was declared brought It was further alleged by the complainant-Rohit Kumar that earlier also petitioner-Ashok Bhatia used to threaten to eliminate his father, but they did not take it seriously and on that day while complaining of not giving phone charger, petitioner-Ashok Bhatia fired about 1-1.5 inch range from his licenced revolver near the left ear of his father and killed him and at that time Babbu @ Balwinder Kumar was also with him and complainant-Rohit Kumar requested to take legal action against the petitioner-Ashok Bhatia and his companion Babby @ Balwinder Kumar.”

6. The petitioner's case is mentioned in para 4 of the bail petition, which is supported by the petitioner's affidavit,

“4. That true facts of the case are that on 22.08.2022 the petitioner along with Babbu @ Balwinder Kumar had gone to get the gun license renewed and when they come back the deceased requested charger from the petitioner as the house of the deceased and the petitioner are in front of each other and the petitioner told him to take from the car. The gun of the petitioner was also lying in the car and as the deceased started looking the gun, accidentally he pulled the trigger and the gun shot hit him at left side of the skull. The nature of the gun shot injury shows that it was accidental not intentional by anyone. Had the petitioner been intended to kill him, the petitioner could have fired on head or on chest. The MLR report of the deceased dated 23.08.2022 is placed on record as Annexure P-2. Even the deceased was taken to hospital by the petitioner and his brother Vijay Bhatia which can be seen from the fact that in the entry register of the hospital mobile number of the brother of the petitioner is mentioned. True photocopy of the hospital entry register is placed on record as Annexure P-3.”

7. After interim protection, the complainant alleged threat but on the directions of this court, the police verified and found the allegations of the complainant as false. It appears that the complainant levelled false allegations of threat due to the stay of arrest in the interregnum.

8. The response of the concerned DySP to the defence taken up by the petitioner is mentioned in para 6 of the reply dated 20-3-2023, filed by the concerned DySP, and it reads as follows:

“6. That it is respectfully submitted that as far as the contentions raised by the petitioner in para no.4 of the petition to the extent of location of houses of the petitioner-Ashok Bhatia and deceased, it is admitted that the house of the petitioner-Ashok Bhatia is at the other side of the street in front of the house of the deceased. Rest of the entire contents of this para of the petition are concocted and false story has been cooked by the petitioner in order to mislead this Hon'ble Court and to get relief and sympathy of this Hon'ble Court. It is further submitted that petitioner further contended in para no.4 of the petition that deceased-Hem Raj had asked for the charger and he asked him to get the same from car, where his revolver was also lying and deceased started looking at the gun and he accidentally pulled the trigger and gun shot hit him at the left side of the skull. In this regard it is submitted that deceased was a mature person of 50 years and it is unbelievable that person of such an age would play with the firearm while seeing the revolver in the car. It is also unbelievable that deceased took the same and immediately put the same on left temple (near left ear) and pulled the trigger, when there was no reason for the same. It is further submitted that the complainant-Rohit Kumar has mentioned in his statement that petitioner used to threaten to eliminate his father but they did not take it seriously. It is further submitted that similarly, on the day of occurrence, the petitioner- Ashok Bhatia again pointed revolver near the left ear of the deceased and at that time also, the deceased did not take it seriously, but the petitioner-Ashok Bhatia pulled the trigger this time and killed the deceased-Hem Raj. It is further submitted that the story put forth by the petitioner-Ashok Bhatia that deceased himself accidentally pulled the trigger and killed himself, is also not believable as in such a situation the seat of injury must not be the left side of the head of the deceased. It is further submitted that the story of the petitioner-Ashok Bhatia also not believable as a person while taking any article from the car bend himself inside the car, and in case the deceased himself pulled the trigger of revolver, as alleged by the petitioner-Ashok Bhatia in para no.4 of the petition, on his head, then the body of the deceased must be found in the car and there must be blood stained in the car. It is further submitted that from the report of the autopsy of the deceased-Hem Raj it is established that the entry point of the bullet was at left temporal region of the skull and bullet travelled from left temporal-parietal region of the skull to right occipital region of the brain matter and a large piece of the bullet recovered from the right occipital region of brain matter, meaning, thereby the trigger was pulled at the straight left side of the deceased and it certainly cannot be an accidental fire by the deceased himself.”

10. Prima facie the investigation points towards improbability of the defence the petitioner is trying to setup. The evidence collected so far points towards the petitioner. Given the previous apprehension of the deceased's family, petitioner fails to make a case for anticipatory bail.

11. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. 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 therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima

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facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. PadamNarain Aggarwal (2008) 13 SCC 305].

12. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

13. **Petition dismissed in aforesaid terms. All interim orders granting bail stand vacated.** All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

17.05.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.