

CRM-M-12146-2023 (O&M)

1

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

CRM-M-12146-2023 (O&M)

Date of decision: 21.03.2023

Ravi Kumar

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Namita Khurana, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

CRM-13220-2023

Prayer in the present application is for addition of Section 379-B of IPC in the headnote as well as prayer clause of the petition.

Notice in the application.

On asking of the Court, Mr. B.S. Virk, DAG, Haryana accepts notice on behalf of the respondent-State and pleads no objection if the application is allowed.

In view of the above, application is allowed as prayed for. Registry is directed to do the needful.

CRM-M-12146-2023

Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.03 dated 03.01.2023, under Sections 148, 149, 323, 379-B (added today), 506, 427, 452 of Indian Penal Code, registered at Police Station Sector-17, Huda, Jagadhri, District Yamuna Nagar.

As per facts of the case, FIR was lodged on the complaint

filed by Nitin wherein it was alleged that he was running City Paradise Hotel since the year 2020. On 03.01.2023 at about 07:30 PM when he was at hotel, three boys heavily drunk had come to his hotel and they started demanding a room from him. However, after seeing them in inebriated condition, he refused to give the room but after about 15 minutes, they again came there along with 10-15 boys duly armed with iron angle, pipe, rod and iron pipe in their hands and they started damaging the property in hotel and the complainant in order to save his life run away from the hotel. However, one of the boy caught him from the neck and forcibly snatched away his gold chain. All the boys threatened the complainant to be killed. The whole incident was recorded in the CCTV installed in the hotel. Request was made to take legal action against the petitioner.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the petitioner cannot be identified in the CCTV as alleged by the complainant. He also submits that the allegations pertaining to snatching of the chain are also false and frivolous and not supported by any evidence. He submits that no specific role has been attributed to the petitioner and thus, he deserves to be granted bail.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that there are specific allegations made by the complainant against petitioner and the co-accused. The whole incident has been captured in the CCTV camera. It is found that the petitioner was armed with iron rod and damaged various articles in the hotel when they were in inebriated condition. The investigation is at threshold and the

case is to be investigated thoroughly.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on 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.”

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

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.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, 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 ensconced with a favorable 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.

In view of the overall facts and circumstances of the case, this Court finds that the petitioner do not qualify for the grant of anticipatory bail. Resultantly, the present petition, being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

21.03.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No