

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

104

CRM-M-12668-2023 (O&M)

Date of decision: 18.04.2023

KIRANJIT KAUR

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY. J.

1. Present petition has been filed under Section 438 Cr.P.C. for grant of Anticipatory bail to the present petitioner in FIR no.55 dated 29.03.2022, under Sections 454, 380, 448, 511, 120-B IPC registered at Police Station Civil Lines Patiala, District Patiala.

2. Briefly put, the facts of the case are that the complainant along with his two brothers, are citizens of England and his father Shingara Singh was the owner of plot No. 41, measuring 354 square yards, situated in Shree Niwas Colony near Charan Bagh, Patiala. After the death of his father in the year 2002, the said plot was inherited by his mother and three brothers in equal shares. Thereafter, the area measuring 177 square yards belonging to his mother, Satnam Kaur and brother, Piara Singh had been transferred to the complainant and his elder brother Karnail Takhat Singh. On 24.03.2022, when they visited their house it was found out that not only some other lock was installed at the gate but also, Neem, Deik, Mango and Guava trees were uprooted and sold. Thereafter, on

further enquiry it was found that two ACs, five fans, refrigerator and other articles had been stolen by petitioner-Kiranjit Kaur, Asanpreet Singh, Shubhpreet Kaur, Hardeep Singh and Gagan with an intention to take over the house in question. Accordingly, the present FIR has been lodged by the complainant.

3. Learned counsel submits that the petitioner has been falsely implicated in the case as besides the statement of the complainant, there is no iota of evidence which could connect her with the alleged crime. She had been put into possession of the house in question by the co-accused Hardeep Singh and Gagan. It is submitted that the petitioner is ready and willing to join the investigation as and when required by the investigating agency.

4. Status report by way of affidavit of Sanjeev Singla, PPS, Deputy Superintendent of Police, City-1, District Patiala has been filed by learned State counsel. He opposes the prayer on the ground that after the registration of present FIR, accused Asanpreet Singh (son of petitioner) who was arrested on 30.03.2022, revealed in the investigation that he, his mother and sister had been living in the house in question for the last 6 months. Two ceiling fans have also been recovered from him. The offence against the petitioner is of trespassing committed in connivance with the co-accused and of stealing ACs, Fans, Refrigerator etc. The custodial interrogation of the petitioner is required, to recover the valuable articles stolen from the property of the complainant, and ascertain the role of the co-accused.

5. Heard.

6. 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**, (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.”

7. The manner in which the crime is committed, gravity of the offence,

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.

8. The relevant paras of the status report read thus :-

“5. That thereafter, accused Asanpreet Singh (son of petitioner) was arrested on 30.03.2022 by the police and thereafter, during the course of investigation, he revealed that he, his mother and his sister had been living in this house from the last 6 months. It is pertinent to mention here that two ceiling fans have been recovered from the possession of Asanpreet Singh, son of the petitioner and he was unable to put-forth in what capacity he and his family came in possession of the disputed house, however, the accused Asanpreet Singh was granted regular bail by the Ld. JMIC, Patiala vide order granted 04.05.2022.

6. That the petitioner in connivance with co-accused has committed a heinous offence by illegally trespassing and possessing the house of complainant and his family who are NRIs and the petitioner and others have stolen various valuable articles from the house. Thus, the offences committed by the petitioner are primarily against the society and the petitioner is not entitled to any relief.”

9. In the case at hand, grave allegations have been levelled against the petitioner of trespassing the property of the complainant and committing theft of valuable articles. The complainant and his brother Karnail Takhat Singh, who are the residents of England, when visited their house on 24.03.2022, found that not only some other locks had been put up in place of the original ones, but also ACs, fans, refrigerator and many other valuable articles were missing from the house. The Neem, Daink, Mango and Guava trees had also been uprooted and sold. On further enquiry, it came to light that the petitioner, alongwith Asanpreet Singh, Subhpreet Kaur, Hardeep Singh and Gagan had committed the offence.

10. In **P. Chidambaram vs. Directorate of Enforcement**, (2020) 13 SCC 791, Hon’ble The Supreme Court has observed that, “Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of

the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

11. The investigation in the present case is stated to be going on. The custodial interrogation of the petitioner is required by the Investigating agency as recovery of stolen articles is yet to be effected and *modus operandi* in committing the crime has to be ascertained alongwith the role of the co-accused, therefore, the petitioner does not deserve the concession of anticipatory bail.

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

(AMAN CHAUDHARY)
JUDGE

April 18, 2023

M.Kamra

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No