

103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14004-2023
DECIDED ON: 20.03.2023

RAJENDER PRASHAD AND OTHERS

PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr Pankaj Nanhera, Advocate & Mr. Rahul gautam, Advocate
for the petitioners.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

SANDEEP MOUDGIL, J

CRM-12816-2023

Application is allowed, as prayed for.

CRM-M-14004-2023

The jurisdiction of this court under section 438 of the code of criminal procedure, 1973 has been invoked for the grant of anticipatory bail to the petitioner in a complaint under section 302, 201 and 34 IPC titled as **“Mange Ram vs. Rajender Prasad etc.”**

Learned counsel for the petitioners contends that the present petitioners have been falsely implicated in the present case and through protest petition filed by respondent no.2 they have been summoned to face trial vide order dated 01.03.2023 passed by JMIC, Faridabad after 13 years when Cancellation report has already been submitted by the police in the court on 18.01.2016 in the above stated FIR in their favour and accused persons were

found innocent of any charge. Petitioners even got their polygraphy test conducted during investigation and nothing incriminating was found against the petitioners.

Learned State counsel has vehemently opposed the prayer made by petitioners on the ground that there are specific allegations against the accused persons for helping in the commissioning of the offence. He further points out that the Cancellation report was prepared on 11.11.2011 and was submitted on 18.01.2016 by the police in the court after a delay of around 5 years and no proper explanation has been provided by the concerned investigating officer for such delay.

Perusal of the file reveals that the deceased was the brother of respondent no.2 who was working as a ward boy in metro hospital and petitioner no.4 was also working in the same hospital as a driver. On 18.08.2010 deceased did not return home and he called his wife and stated that he is with petitioner no. 4 namely Girraj and would get late. On 19.08.2010 respondent received information about his brother body lying dead near pyala Railway fatak and on reaching there he found several injuries over the body of the deceased and got to know that accused persons have murdered the deceased. The motive behind the murder was that the deceased slapped the father of the accused no. 2 for abusing his father. And then accused no.2 went to the house of the deceased and extended threat to the wife and sister of the deceased that they will kill Mohan.

Considering the aforesaid facts and circumstances, that the deceased had made a call to his wife before his death and had specifically stated

that he was with accused no. 4 girraj /petitioner there is direct evidence to connect he petitioners with the case. Furthermore the motive of accused persons as would point towards their role and involvement in the present can be gathered from the fact that there was old vengeance between the deceased and accused persons.

Without further commenting upon the merits of this case reliance can be placed upon the judgement rendered by constitutional Bench of the Apex Court wherein they have interpreted Section 438(1) of Cr.P.C., in the case **Gurubaksh Singh Sibbia vs State of Punjab**, ((1980)2 SCC 565) which indicated: -

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a

passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely.”

In light of the above and seeing the gravity of the offences and all other ramifications involved, custodial interrogation of the petitioners is required to unearth the truth and thus present application for grant of anticipatory bail is dismissed being devoid of merits.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

Accordingly, the present petition stands Dismissed.

(SANDEEP MOUDGIL)
JUDGE

20.03.2023

Sham

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No