

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

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CRM-M-15883-2023 (O&M)

Date of decision: 29.03.2023

JASWANT SINGH @ BILLA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No.369 dated 17.12.2022, under Sections 323, 324, 326, 148 and 149 of the Indian Penal Code, 1860 registered at Police Station Division-B District Amritsar.

The present FIR has been registered on the basis of statement made by complainant-Harjit Singh, that on 16.12.2022 he received a phone call from the son of his sister namely; Gagandeep Singh, who told him that the boys of his neighbourhood namely Paras, Navjot Singh @ Goli and Billa (present petitioner) alongwith 7-8 unknown boys have attacked him and beaten him in which Paras had given a datar blow on his right hand. At about 9:30 p.m., when the complainant reached the house of his sister to ask about their well being and parked his car outside the house, he saw Paras armed with datar, Navjot Singh @

Goli armed with datar, Billa (present petitioner) armed with datar alongwith 7-8 other boys who were armed with sotras, already standing in the street attacked the complainant and gave him multiple injuries. Paras by raising a lalkara, gave a datar blow on the left shoulder of the complainant, Goli gave a datar blow on his fingers of left hand and petitioner-Billa gave a datar blow on his head. Paras gave another datar blow on the complainant which hit him on the middle finger of his right hand due to which one tip of his right middle finger was chopped off. He fell down on the ground. While he was lying on the ground, the unknown boys gave him fist and kick blows. Thereafter, all the assailants ran away from the spot along with their respective weapons and the complainant was got admitted in the Civil Hospital, Amritsar.

Learned counsel submits that the petitioner has been falsely implicated in the present FIR and the injury attracting the offence under Section 326 IPC has not been attributed to him. He further submits that the petitioner is ready and willing to join the investigation as and when required by the investigating agency.

On receipt of advance notice, Mr.MS Atwal, DAG, Punjab puts in appearance and has produced the MLR of the complainant as per which injury No.3 was declared to be grievous in nature. He submits that there are serious and specific attribution to the petitioner, who was the part of the unlawful assembly and with pre-meditated mind attacked the complainant causing him multiple injuries. There is every possibility of the petitioner influencing the witnesses and tampering with evidence. The investigation is going on. The recovery of the weapons is to be effected from the accused, names of the other co-accused have to

be ascertained, therefore, the custodial interrogation of the petitioner is necessary.

Heard.

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

The allegations against the petitioner are grave in nature inasmuch as a day prior to lodging of the FIR by the complainant of being attacked and mercilessly beaten with deadly weapons by the petitioner alongwith the co-accused, out of three were named and 7-8 were unknown, it was alleged that the same set of accused had caused injuries to Gagandeep-nephew of the complainant.

Hon'ble The Supreme Court in '**Jai Parkash Singh Vs. State of Bihar**' reported as (2012) 4 SCC 379 has held as under:

“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.”

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.”

Considering the facts and circumstances of the case, the manner of commission of offence, judgment referred to hereinabove; there being apprehension of influencing of witnesses and tampering with the evidence by the petitioner, weapons still to be recovered, names of other co-accused, who were 7-8 in number, yet to be ascertained for which, the custodial interrogation of the petitioner is stated to be required as the investigation is going on, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

Accordingly, the present petition being devoid of merit is dismissed.

Needless to say that observations made hereinabove are meant only

for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

March 29, 2023

S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No