

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

CRM-M-17185-2023
Decided on : 13.04.2023

CHARANJIT SINGH @ PARAS

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Rishu Mahajan, Advocate for the petitioner

Mr.Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.369 dated 17.12.2022, under Sections 323, 324, 326, 148 and 149 IPC registered at Police Station B Division, 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 (present petitioner), Navjot Singh @ Goli and Billa alongwith 7-8 unknown boys have attacked upon him and beaten him in which Paras (present petitioner) had given a *datar* blow on his right hand. At about 9.30 PM when he reached the house of his sister to ask about their well being, he parked his car outside the house, Paras (present petitioner) armed with *datar*, Navjot Singh @ Goli armed with *datar*, Billa armed with *datar* alongwith 7-8 other boys who armed

with *sotas*, were already standing in the street. The petitioner raised a *lalkara* to catch hold of the complainant. Upon this, the petitioner gave a *datar* blow which hit the complainant on his left shoulder and on the middle finger of his right hand due to which the tip of his right middle finger was chopped off and he fell down on the ground. Accused Goli also gave a *datar* blow which hit him on the fingers of his left hand. Billa gave a *datar* blow which hit his head. 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 alongwith 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 was neither involved in the said assault nor he committed the act as alleged. He only took his father alongwith him, where the group of people were fighting. He further submits that the petitioner is ready and willing to join the investigation as and when required by the investigating agency.

On advance notice, Mr. Manipal Singh Atwal, DAG, Punjab puts in appearance on behalf of the respondent-State and submits that the petitioner is the main accused as it is he who had hit the nephew of the complainant, namely, Gagandeep Singh, with his Aactiva and had beaten him. The complainant had gone to see his aforesaid nephew, when the petitioner gave a *lalkara* to teach a lesson and all accused charged towards the complainant. The petitioner inflicted two injuries with sharp edged weapon i.e. *datar* on his person, one of which resulted in chopping of the tip of his right middle finger, that has been declared as grievous. The

investigation is going on, the names of the accomplices, who are 7-8 in numbers have still to be found out and weapons are yet to be recovered, thus, the custodial interrogation of the petitioner is required. He further submits that anticipatory bail petition of co-accused, namely, Jaswant Singh @ Billa has already been dismissed by this Court vide order dated 29.03.2023.

Heard.

It would be worthwhile to refer to the judgment of Hon'ble The Supreme Court in '**Jai Parkash Singh vs. State of Bihar**' (2012) 4 SCC 379, wherein while relying on the judgments in the cases of **D.K Ganesh Babu vs. 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 vs. Padam Narain Aggarwal** (2008) 13 SCC 305, 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.”

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.”

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.

In the case at hand, the allegations are grave in nature and detailed in the FIR. Apropos, the complainant has unequivocally assigned specific role to the petitioner herein of having not only raised a lalkara to

teach the petitioner a lesson for having come to the house of his sister so as to enquire about the well being of his nephew, namely, Gagandeep Singh and caused injuries to him on his left shoulder and inflicting a *datar* blow, which resulted in chopping off the tip of the middle of his right hand, which has been declared grievous. All the other 7-8 accomplices of the petitioner, who were standing in the street and armed with weapons had launched the attack on the lalkara raised by the petitioner to teach a lesson to the injured-complainant. The investigation is stated to be going on and the custodial interrogation of the petitioner is sought to ascertain the names of the other accused involved and for the recovery of the weapons. Ergo, the gamut of facts and circumstances do not make out a case for the petitioner to be granted concession of anticipatory bail.

In P. Chidambaram vs. Directorate of Enforcement (SC)

2019 (4) RCR (Criminal) 875 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.”

In view of the foregoing discussion, the present petition being devoid of merits is hereby 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

13.04.2023
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No