

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

CRM-M-17562-2023 (O&M)
Date of Decision: 17.05.2023

SURAJ

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Varun Sharma, Advocate
for the petitioner.

Mr. R.K. Singla, D.A.G., Haryana.

Mr. Amit Chaudhary, Advocate
for the complainant.

HARSH BUNGER, J. (ORAL)

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 719, dated 14.11.2022, registered under Section 148, 149, 323, 452, 506 of Indian Penal Code (in short "IPC"), at Police Station City Palwal, District Palwal (offence under Sections 325 and 307 IPC, added later on).

2. Upon issuance of notice in this case, status report by way of an affidavit dated 24.04.2023 of Sh. Anil Kumar, HPS, Deputy Superintendent of Police, District Palwal, has been filed on behalf of State of Haryana, which is already on record.

3. Briefly, the afore-stated FIR was registered on the complaint of Mohan Singh son of Sukhpal Singh against Sooraj (petitioner), Suneel sons of Dharamveer, Hariom, Dayaram, Manish sons of Mahender Singh, Mahender Singh son of Gyani and Peetam son of Gopal @ Boori with regard

to an alleged occurrence of physical assault in which Vinod Kumar and Deepanshu sustained bodily injuries. It is alleged that on dated 11.11.2022 at about 7:20 PM when the complainant alongwith his uncle's son Vinod son of Satpal and brother's son Deepanshu were sitting inside the dairy for accounting of milk and were calculating payments received upon sale of milk then the accused persons after conjointly hatching a conspiracy and armed with hand axe (*Farsa*), sticks and rods etc. came inside the dairy while hurling abuses and caused injuries to Vinod Kumar and Deepanshu.

4. As per the Status Report filed on behalf of State of Haryana, injured Vinod Kumar and Deepanshu were medico legally examined at Government Hospital, Palwal and as per their MLRs, Vinod Kumar sustained three injuries and Deepanshu sustained one injury. Vinod Kumar is stated to have remained as indoor patient at "FELIX Hospital" Noida from 12.11.2022 to 16.11.2022 and he was found to have sustained "*a communicated fracture of the left parietal bone, which is also depressed*". Deepanshu was diagnosed with fracture on 4th and 5th Meta carpel of left hand. On 29.11.2022, the medical opinion (Annexure R-3 and R-4) regarding nature of injuries suffered by Vinod Kumar was obtained from Medical Officer concerned at Government Hospital, Palwal, wherein it was opined that the injury was "Dangerous to life". Further during the course of investigation, Dayaram was arrested on 03.01.2023 and he made a disclosure statement admitting the crime and also got recovered the axe (*Farsa*). Pitam was arrested on 02.02.2023 and he made a disclosure statement admitting the crime and also got recovered the *lathi* (*stick*).

5. Apprehending his arrest in this case, the petitioner approached the Court of Additional Sessions Judge, Palwal seeking grant of pre-arrest bail by filing an application; however, the same was declined by the learned

Additional Sessions Judge, Palwal, vide order dated 27.01.2023. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

6. Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that maximum attribution qua petitioner is that he gave injury to Deepanshu on his hand and feet only. It is further submitted that it was a case of fight between two parties and both the parties had given their versions. It is contended that it is the complainant who was creating rukus by creating nuisance early morning at 3:00 AM from sale/purchase of milk from his dairy, which was objected to by the petitioner's family. It is further submitted that no offence under Sections 307 IPC is made out against the petitioner. It is stated that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

7. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. It is submitted that the petitioner is specifically named in the FIR. Learned State counsel reiterated the averments made in the Status Report filed on behalf of State and has submitted that victim-Vinod Kumar has sustained "a communicated fracture of the left parietal bone, which is also depressed" and Deepanshu was diagnosed with fracture on 4th and 5th Meta carpel of left hand. It is further stated that as per the medical opinion (Annexure R-3 and R-4) regarding nature of injuries suffered by Vinod Kumar, it has been opined that the injury was "Dangerous to life". It is stated that the petitioner joined an unlawful assembly and played active role in commission of crime. It is next submitted that the petitioner does not

have clean antecedents as he is involved in another case FIR No. 546, dated 26.07.2018 under Excise Act, registered at Police Station Sadar, Palwal, wherein he was fined with Rs. 20,000/-. It is also submitted that the custodial interrogation of the petitioner is required for complete investigation of this case and also for recovery of weapon of offence i.e. *Lathi*. Accordingly, prayer for dismissal of the petition has been made.

8. I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the State of Haryana.

9. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. In ***P. Chidambaram v. Directorate of Enforcement (SC) 2019(4) RCR (Criminal) 875***, Hon'ble Supreme Court observed as under :-

"67. 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.

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70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article [21](#) of the Constitution of India.

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*72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. by The **CBI v. Anil Sharma (1997) 7 SCC 187**, the Supreme Court 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 favourable 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."

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das v. State of W.B. (2005) 4 SCC 303**, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable

part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.

*75. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379**, the Supreme Court held as under:-*

*"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. 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 v. Padam Narain Aggarwal (2008) 13 SCC 305.**)"*

10. Considering the case in hand in view of the afore-stated legal

position, would manifest that the petitioner has been specifically named in the FIR and specific allegations have been made against him. The petitioner is alleged to be a part of an unlawful assembly and has played active role in commission of crime. As per the prosecution story, petitioner along with his accomplices had indulged in giving merciless assault to Vinod Kumar and Deepanshu. The injury suffered by Vinod Kumar has been declared as 'dangerous to life'. As per status report, only Dayaram and Pitam were arrested, whereas the other accused are yet to be arrested. Petitioner is stated to be involved in another case as well. Thus, Custodial interrogation of the petitioner is definitely required for complete and effective investigation so as to find out how the incident was planned and executed and part played by each one of the assailants. The petitioner is to be questioned in detail regarding various facets of the crime. Custodial interrogation of the petitioner may provide information leading to discovery of material facts. Recovery of weapons used in the incident is also to be affected. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

11. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No. 719, dated 14.11.2022, registered under Section 148, 149, 323, 452, 506 of IPC, at Police Station City Palwal, District Palwal (offence under Ssections 325 and 307 added later on); is dismissed.

12. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.
13. All pending application/s, if any, shall also stand closed.

May 17th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No