

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

CRM-M-18053-2023
Date of decision: 08.05.2023

Angrej Singh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Raghav Sharma, Advocate for the petitioner

Mr. Tanuj Sharma, AAG Haryana

Mr. Deepak Sharma, Advocate for the complainant

AMAN CHAUDHARY. J.

1. This is the 2nd petition filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case of FIR No.929 dated 23.10.2022, registered under Sections 302, 307, 323, 324/34, 506 of the Indian Penal Code, at Police Station Shahbad, District Kurukshetra.

2. The facts in brief, as per the FIR registered on the basis of the statement of one Reena Rani, are that on 23.10.2022, she, her husband and two nephews Guruvinder Singh and Ajay Kumar were going to pay obeisance at the Peer in the fields of the village. At around 12.00/12.30 pm, when they reached near the tubewell, accused Jai Bhagwan and Angrej Singh both sons of Buta Singh came on their motorcycle armed with a knife and gandasi and started fighting with them. Accused Jai Bhagwan caused injuries to her husband and her nephew Guruvinder Singh and Angrej Singh to Ajay Kumar with their respective weapons. On seeing the quarrel, the villagers came at the spot, due to which, they ran away.

Her husband succumbed to the injuries.

3. Learned counsel would submit that the petitioner was neither present at the spot nor did he commit the offence, as alleged. There is a family dispute regarding the ancestral land. He has been falsely implicated to settle the score as he is also a beneficiary of the land. The allegation against the petitioner is of causing injury on the leg of one Ajay Singh, for which, there is no medical evidence. The petitioner is ready and willing to join the investigation as and when required by the investigating agency.

4. On advance notice, Mr. Tanuj Sharma, Assistant Advocate General, Haryana and Mr. Deepak Sharma, Advocate for the complainant put in appearance and submitted that there are specific allegations against the petitioner that he in connivance with his co-accused had together in a pre-planned manner attacked the deceased Jagdish Chand as well as Gurwinder Singh and Ajay Kumar with sharp edged weapons i.e. knife and gandasi, as a result of which, as many as ten injuries, were caused on the person of the deceased. Challan stands presented against co-accused Jai Bhagwan on 21.01.2023, however, the petitioner being at large, the investigation qua him still remains to be carried out and recovery of gandasi is also yet to be effected, as such, his custodial interrogation is required. There was a motive with the accused to have caused the injuries that led to the death of the husband of the complainant. During investigation, co-accused was arrested 25.10.2022 and in his statement had specifically deposed that he alongwith the petitioner had attacked deceased Jagdish Chand with knife and gandasi causing him injuries. The material witnesses have not been examined and there is every possibility of the petitioner threatening and influencing them as also of tampering with the evidence. He may also abscond as he is stated to have come back from

Riyadh where he is working.

5. Heard.

6. It would be apposite to make a reference to relevant part of para No.3 of the status report filed by way of affidavit of The Deputy Superintendent of Police, Kurukshetra, the relevant portion whereof reads thus:

“During investigation of the present case the co-accused, namely, Jai Bhagwan was arrested in the present case on 25.10.2022 and he has admitted his crime that he along with present petitioner/accused attacked on Jagdish Chand with knife and present petitioner/accused has attacked on deceased with gandasi many times on deceased and due to that deceased Jai Bhagwan had lost his life.”

7. 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 vs. 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.”

8. In the case at hand, the allegations are grave in nature as detailed in the FIR. There was a dispute regarding distribution of land between the deceased and the family of accused. The petitioner and his brother-co-accused are stated to have come to the spot with premeditated mind, attacked the husband of the complainant and their nephews with their respective weapons i.e. knife and gandas. Her husband died on account of the injuries caused to him. As per the post mortem report, ten injuries were found on the body of the deceased caused with sharp edged weapons. Even her nephews received injuries at the hands of the accused including the petitioner. Co-accused, who has already been arrested, specifically stated that he alongwith the petitioner had attacked deceased Jagdish

Chand with a knife and gandasi inflicting the injuries.

9. In **P. Chidambaram vs. Directorate of Enforcement** (2019) 9 SCC 24, 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 CrPC 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."

10. The manner in which the crime has been alleged to have been committed, the nature of weapons used, seat, type and number of injuries; the parties living in the same vicinity; there being an ongoing dispute regarding the land; the possibility of the petitioner threatening the complainant and influencing the witnesses as also fleeing from justice; recovery of the gandasi is yet to be effected, custodial interrogation is stated to be necessary to unravel the truth, thus, this Court finds it to be not a fit case for grant of anticipatory bail to the petitioner.

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

12. The 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

08.05.2023
GSV

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