

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

103

CRM-M-25321-2023
Date of decision: 22.05.2023

Mandeep

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sunil Sheoran, Advocate for the petitioner

Mr. Jagdish Manchanda, Addl. AG Haryana

Mr. Vijay Sangwan, Advocate for the complainant

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case of FIR No.7 dated 05.01.2023, registered under Sections 323, 324, 506 IPC (Section 307 IPC added lateron), at Police Station Rohtak Urban Estate, District Rohtak.

2. *Brevatim et seriatim*, the facts emanating from the FIR are that on 31.12.2022 at about 11:00 p.m., complainant along with his colleagues had gone to Headquarter Bar for the purpose of relaxation. When they were seated there, no altercation took place with the petitioner and his co-accused. As soon as they paid the bill for their meals, the injured on having been found alone was cordoned off by the culprits and was caused injuries with a broken glass bottle plunged into his belly, leg, chest and neck while being hurled abuses.

3. Learned counsel for the petitioner contends that it is a case of version and cross-version. The petitioner had also lodged a DDR, upon which FIR No.8 dated 05.01.2023, Annexure P-4, under Section 323, 354, 506, 509 and 34 IPC was registered against the complainant and 4 more persons. There is no specific attribution to the petitioner of having caused injury to the complainant. The Medical Board did not give any opinion that the injuries inflicted to the complainant were dangerous to life. The opinion was again sought, wherein it was observed that hypovolemic shock, which is on account of blood loss, can lead to threat to life of a patient, if not treated properly and timely. There is no other case against the petitioner. He is ready and willing to join the investigation.

4. Learned State counsel assisted by learned counsel for the complainant submits that the petitioner and other co-accused had attacked the complainant finding him alone when he had gone for urination. The injuries were caused by a liquor bottle in the stomach and on the head of the complainant for which purpose, an opinion was given by the Board of Doctors consisting of Drs. Love Sharma, Mahabir Singh and Sunil Kumar of PGIMS Rohtak that the injuries were declared to be dangerous to life. The FIR lodged by the injured-complainant prior in time, being FIR No.7 dated 05.01.2023, and only then as a counter-blast, FIR No.8 was lodged by the petitioner. There is an apprehension of the petitioner influencing the witnesses and/or tampering with the evidence and thus, misusing of the concession of bail.

5. Heard.

6. 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.”

7. In the instant case, the allegations are grave in nature as detailed in the FIR. The petitioner alongwith other accused cordoned off the complainant and caused injuries on the vital part, one of the blows was with a broken glass bottle that had been thrust into his belly passing through his jacket. Other injuries had been caused on his leg, chest and neck whilst hurling profane epithets all along. The injuries are dangerous to life as opined by the Board of Doctors.

8. Here, it would be germane to refer to the case of **P. Chidambaram vs. Directorate of Enforcement** (2019) 9 SCC 24, in which 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.”

9. 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 possibility of the petitioner threatening the complainant and influencing the witnesses as also fleeing from justice; 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.

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

11. 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

22.05.2023
M.Kamra

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