

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

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CRM-M-25845-2023
Date of decision: 22.05.2023

Manjit Singh @ Meeta

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sandeep Arora, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. By filing the present petition under Section 438 of the Code of Criminal Procedure, the petitioner is seeking anticipatory bail in case FIR No.53 dated 29.07.2022, registered under Sections 323, 324, 325, 34 IPC (Section 306 IPC added lateron), at Police Station Kabirpur (Ahlikalan), District Kapurthala.

2. Briefly, the facts of the case are that the complainant had moved a complaint before the police authorities that on 25.07.2022 around 7.00 P.M, the petitioner parked his vehicle in front of her gate in the street, to which she objected. On this, Kuldeep Singh son of Gurbaksh Singh got a wooden block from his house and inflicted a wooden block blow on her right arm, and then a second blow on her left shoulder. Aggrieved, she raised raula, on hearing which her son Jobanpreet Singh came out of the house. The petitioner inflicted a blow with his dasti Kirpan upon him hitting the left side of his head. Then, Kuldeep Singh hit again on her head with his dasti wooden blow. Further, the complainant had submitted that her son, on receiving the injuries, fell down in the street. Thereafter

Vijay Kumar gave kick blows to her son which fell on his left eyebrow. On this, she along with her son raised raula “Maar Ditta Maar Ditta.” As per the submission, the whole occurrence was also witnessed by her husband Jassa. Thereafter, a vehicle was arranged and both the injured were admitted at Civil hospital at Sultanpur Lodhi. Since the injuries on her son were identified to be grievous, as such he was referred and admitted therefore, to Shriman Hospital, Jalandhar.

3. Learned counsel for the petitioner contends that the FIR in question was registered after a delay of four days of the incident. The petitioner and the complainant are neighbours and the fight took place over the issue of parking. The petitioner attributed injuries over the head of injured Jobanpreet Singh, which were simple in nature. He is not involved in any other case and is ready and willing to join the investigation.

4. On the other hand, Learned State counsel assisted by the learned counsel for the complainant, opposes the bail on the ground that as per MLR, the injury caused on the head with a sharp edged weapon i.e. kirpan, was declared grievous in nature. The investigation is going on and the weapon of offence i.e. kirpan is yet to be recovered. The other co-accused have been arrested, however the petitioner is at large. There is apprehension of the petitioner to influence the witnesses and tamper with the evidence.

5. Heard.

6. 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 decisions 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, it was 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 case at hand, the allegations are grave in nature as detailed in the FIR of having attacked in a group with wooden block, kirpans and inflicting various injuries on the arm, shoulder, forehead and head of the complainant, and on the forehead, head and eyebrow of her son; some of which had even been identified as grievous in nature as per the two MLRs and the X-ray report. The complainant and her son, who were injured, had been admitted to the hospital and thereafter, her son was further referred to another hospital, his injuries being more grave. The treatment included multiple blood transfusions and surgery on account of which, they remained admitted for a long period, evincing further the grave nature of the attack and the injuries caused.

8. 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.”

9. With respect to 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 complainant and petitioner being neighbours residing in vicinity the possibility of the petitioner threatening the complainant and influencing the witnesses as also tampering with the evidence, custodial interrogation is stated to be necessary to recover the weapons. 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