

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(102)

2023:PHHC:075775
CRM-M-25527-2023
Date of Decision: 19.05.2023

Kahana Ram

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Ms. Rhythem Bajaj, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.03 dated 12.1.2023 under sections 365, 323, 342, 506, 34, 120-B I.P.C and Section 3 of Prevention of Damage to Public Property Act and enhanced offence under section 379-B IPC vide Rapat No.19 dated 13.1.2023, registered at Police Station, Bahav Wala, District Fazilka.

As per factual matrix, the FIR in question was registered on the complaint made by Gagandeep Singh, Superintendent, office of B.D.P.O, Khuhian Sarwar at Abohar, wherein it was alleged that the complainant is a public servant and Sh. Pardeep Kumar was posted as Administrator. The construction work of pond in the village was going on and labour was deputed for said work. When the work was being executed by the Administrator, at about 11.30 AM Kahana Ram i.e. the present petitioner, Krishan Kumar and Mohan Lal of village Dharampur reached and started abusing and obstructed the work being carried out. The labour and the masons requested not to obstruct the work but they did not listen and caused injuries to the two masons and interrupted the on going work. The labour

and the masons had to escape from the spot to save themselves. On account of the same FIR in question was lodged to take legal action against the culprits.

Apprehending the arrest, petitioner Kahana Ram approached the court of learned Addl. Sessions Judge, Fazilka for grant of bail, however, after hearing the parties, the same was declined vide order dated 4.3.2023. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in this case. It is submitted that the allegations made are false and frivolous. It is further submitted that the allegation pertaining to snatching of gold chain has been falsely levelled against the petitioner only in order to make the offence a serious one. Counsel submits that petitioner has been implicated in this case at the instance of Sumitra Devi, Sarpanch of the village due to political rivalry amongst two sides. Counsel submits that no case for custodial interrogation of the petitioner is made out and he is ready to join investigation.

I have heard learned counsel for the petitioner at length and have gone through the records carefully.

From the allegations made in the FIR, it is apparent that the FIR has been lodged by a public servant on the allegations that public work was being executed by the Administrator and petitioner and co-accused gave beatings to the labour and masons. There are allegations that accused caught hold mason Devi Lal and Sanjay Kumar and they were picked up from the ongoing work and were illegally confined in their house and were also given beatings. Similarly situated co-accused namely Krishan Kumar

and Mohal Lal had also approached this court for grant of bail, however, their petitions were allowed to be withdrawn by this court.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has 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 ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disintering offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632*** has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the

*converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in **State v. Captain Jagjit Singh (1962) 3 SCR 622**, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the

Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

19.05.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No