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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31671-2023
DECIDED ON:05.07.2023

SATPAL SINGH

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Navneet Kaur Waraich, Advocate
for the petitioner

Mr. Karan Puggal, DAG, Punjab.

SANDEEP MOUDGIL, J. (ORAL)

1. This is the 2nd petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in FIR No.8, dated 17.01.2023, under Sections 324, 323 and 34 of the IPC, 1860, (Sections 307 of IPC added later on) registered at Police Station Sadar Jalalabad, District Fazilka.

2. Learned counsel for the petitioner contends that the injury attributed to the petitioner is given by kapa blow, which hit directly behind the head of the complainant and another kapa blow, which hit on the left side of the complainant's back, apart from blow with kapa from reverse side on the right side of the complainant's head. He also asserts that there is no other injury attributed to the petitioner and it is the other co-accused persons to whom various injuries have been attributed with Kapa or other weapons.

He submits that there is a delay of 6 days in lodging the complaint with the

police, as the occurrence took place on 08.01.2023 and a Rapat No.23 was recorded on 14.01.2023 on the statement of Paramjit Singh s/o Karnail Singh, which eventually culminated into the instant FIR on 17.01.2023.

3. Today, claiming the maintainability of second anticipatory bail petition, it has been clearly contended that when the first petition was dismissed as withdrawn vide order dated 08.05.2023 (Annexure P-5), learned State counsel made a wrong statement to the effect that the petitioner is involved in other case to make out a case of changed circumstances. For the maintainability of present petition, learned counsel for the petitioner had drawn attention of this Court to the fact that the other co-accused namely Parvinder Singh has granted the concession of interim bail vide order dated 01.05.2023 (Annexure P-3) passed by this Court in CRM-M-21778-2023.

4. Mr. Karan Puggal, DAG, Punjab on the other hand vehemently opposed the present petition primarily on its maintainability urging that second anticipatory bail application is not maintainable. He also submits that no such reference was ever made before this Court on the previous date of hearing and even in the order dated 08.05.2023, it is crystal clear that the petitioner was allowed to be withdrawn, after the counsel for the petitioner has argued the same at length and this Court was not convinced. On merits, he submits that the petitioner has given various kapa blows admittedly on the person of the complainant and the recovery of said weapon is yet to be effected and also that specific injuries have been attributed to the petitioner, who played active role in the commission of crime. Even otherwise as per medico legal report, the nature of injury attributed to the petitioner has been declared to be caused by sharp weapon, which has been classified as

dangerous to life. Therefore, custodial interrogation of the petitioner is required and he does not deserve the concession of anticipatory bail at this stage.

5. Be that as it may, before going to the merits of the case, this Court, would prefer to adjudicate on the preliminary objection raised by the learned State counsel i.e., whether second anticipatory bail application under Section 438 Cr.P.C., 1973 is maintainable.

6. From the perusal of record, it is an admitted fact by the petitioner that earlier also a petition bearing No.CRM-M-22864-2023 was filed seeking anticipatory bail, but the same was dismissed as withdrawn vide order dated 08.05.2023 (Annexure P-5) after arguing at length, since the Court was not inclined to accept the said prayer.

7. In the second anticipatory bail petition, which is otherwise not maintainable, as has been observed by this Court in ***Gaurav Matta vs. State of Haryana*** passed in CRM-M-9494-2023, while relying upon the judgment of Hon'ble five Judges of Supreme Court tested the judicial discretion envisaged under Section 438 Cr.P.C., alongwith other factors connected with the said provision in case ***Gurubaksh Singh Sibbia vs. State of Punjab, ((1980)2 SCC 565)*** and prompted certain principles which may be summarised as under:

“ (i) *The use of the expression 'reason to believe' in Section 438(1) shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief'. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the*

applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 35, 40 and 41).

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had should not generally be passed. Such a blanket order-is bound to cause serious interference with the functions of the police. (Paras 40 and 41)

(ii) If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. (Para 36).

(iii) The filing of an FIR is not a condition precedent to the exercise of the power under Section 438. (Para 37)

(iv) Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested. (Para 38).

(v) The provisions of Section 438 cannot be invoked after the arrest of the accused. (Para 39)

(vi)An order of bail can be passed under Section 438(1) without notice to the Public Prosecutor or the Government advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage (Para 42)

(vii)Regarding time-limit, if any, for anticipatory bail the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. (Para 42)"

8. In the light of aforesaid judicial pronouncements and the provisions of Section 438 Cr.P.C., 1973, it is crystal clear that the Court must be satisfied that a fit case had been made out for exercise of such discretion. This Court has to make an effort to strike a balance between the individuals right to personal freedom and the investigational rights of the police. This provision is not to be applied mechanically especially in the light of phraseology "if it thinks fit" as envisaged therein with Sub Section(2) is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

9. The insertion of word “or” in sub-Section 1 of Section 438 has invested this Court with concurrent jurisdiction. Evidently the discretionary power to the Court does not flow from Article 21 of the Constitution of India for grant of anticipatory bail but conferred by the Statute enacted by the Parliament, wherein a distinction from the language of Sections 438 and 439 Cr.P.C., is quite evident that the provisions contained in Section 439 flow from Article 21 of the Constitution of India.

10. The constitutional Bench of the Apex Court has interpreted Section 438(1) of Cr.P.C., in the case of Gurubaksh’s Singh (supra), which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general

allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

11. Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in a matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under Section 438 indicating in para 8 of the judgment of ***Gurubaksh Singh Sibbia vs. State of Punjab*** (*supra*), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the

normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973".

12. Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under Section 438 Cr.P.C., the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioners.

13. Accordingly, the second or subsequent bail application under Section 438 Cr.P.C., can be filed, if there is a change in the fact-situation or in law, which requires the earlier view being interfered with or where the earlier finding has become obsolete. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

14. Coming back to the circumstances of the case in hand, I am of the considered conclusion that the plea with regard to the other co-accused being on bail was well available to the petitioner very much on the said date, when the first petition was withdrawn on 08.05.2023 (Annexure P-5), as the order granting the bail to the co-accused on 01.05.2023, which is earlier in time. As far as the contention with regard to mentioning of the fact that the petitioner is involved in any other case on the part of the learned State counsel, as alleged to be false, there is no cogent material to support that assertion as to making of such statement by the learned State counsel and hence, it does not hold good. None of the aforesaid reasons pleaded by the petitioner inspire confidence of this Court for considering the second anticipatory bail application, as the petitioner has failed to make out a case within the parameters as discussed hereinabove for its maintainability.

15. This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the ambit of Section 438 Cr.P.C., instant petition fails.

16. Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed.

17. However, it is made clear that anything stated hereinabove shall

not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

05.07.2023

Meenu

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No