

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M- 31051 of 2023

Date of decision : July 27, 2023

Balwinder Kumar alias Babbu

..... Petitioner

Versus

State of Punjab

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Amandeep Saini, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Senior DAG., Punjab.

Mr. Saurav, Advocate for the complainant.

PANKAJ JAIN, J. (ORAL)

1. Present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail in FIR No. 38 dated 22.08.2022 for offences punishable under Sections 302, 34 IPC, 1860 and Section 27, 30 of the Arms Act, 1959 registered at Police Station City Pojewal, District SBS Nagar (Nawanshehar), the petitioner has preferred this petition under Section 438 Cr.P.C seeking pre-arrest bail.
2. As per the allegations levelled in the FIR it has been alleged by the eye witness as under:-

“Statement of Rohit Kumar Son of Hem Raj resident of Village Sandrewal Tehsil Balachaur District Shaheed Bhagat Singh Nagar. I address and doing job as am resident of above noted a helper on private bus. We are two brothers my elder brother is a driver. Today at about 5.30 PM, I & my mother were present in our house and my father came to house after taking fodder for the animals. Then our neighbourer Ashok Kumar @ Shoki called my father when my father came out from the gate said Ashok Kumar put his revolver near the left temple of my father-Hem Raj and fired from it and my father fell down. I along with mother

aforesaid namely raised alarm Ashok Balwinder kumar Kumar to along @ save with Babbu my father then his who is associate standing behind the gate ran away from the spot along with weapon. I after arranging a vehicle took my father to civil hospital Balachaur where my father declared dead by the doctor. The reason of causing murder of my father is that aforesaid Ashok Kumar was threatening my father to kill but we have not taken it seriously. Now while complaining of not giving phone charger, Ashok Bhatia fired about 1- 1.5 inch range from his licensed revolver near the left ear of my father and killed him and at Babbu @ Balwinder Kumar was also involved. Action may kindly be taken against the accused.”

3. Learned counsel for the petitioner submits that there is no overt act attributed to the petitioner apart from the fact that he was standing behind the gate. The allegation with respect to firing is against one Ashok Kumar alias Shoki.

4. Learned counsel for the petitioner further submits that the petitioner has been found innocent in the first enquiry. This will be too early in the day for this Court to comment upon the merits of the case.

5. I have heard learned counsel for the petitioner and have gone through the record of the case.

6. From the bare reading of the FIR it is evident that the petitioner has been specifically named as an accomplice of the main accused by eye witness.

7. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's case (supra)**, Apex Court has held that :-

“..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....

8. *Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-*

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. “

Further Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another 2022 (4) RCR Criminal) 977** held as under:

“There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the

punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. As per settled law (in C.B.I vs. Anil Sharma, 1997(7) 187) there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be allowed to be belayed.
10. The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.
11. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.
12. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case

(PANKAJ JAIN)
JUDGE

July 27, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No