

**102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31820-2023

Date of decision : 20.07.2023

Vishal Kumar

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Prateek Pandit, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This is the second petition filed by the petitioner for grant of anticipatory bail in FIR No.38 dated 14.03.2023 under Sections 323, 452, 148, 149 of IPC (Section 326 IPC added later on), registered at Police Station Sadar Jalandhar, District Jalandhar.

As per the facts of the case, the complaint was lodged on the statement of Kuldeep Kaur @ Bawi. It was alleged that she came to her parental house at Village Phoriwal to meet them. On 11.03.2023 at about 05:30 PM, when she with her father and sisters-in-law and niece were present in the room, Sulakhan @ Sulkhni son of Sadhu Singh had opened the iron gate by force along with Mandeep @ Deepu, Mannu, Vishal @ Shalu, Gagan @ Gaguu, Joga, Deepu and other unknown persons entered into their house forcibly. They were armed with khanda, iron rod and base bat. After entering into their house, they started abusing and asked father of the complainant to call her daughters-in-law. On refusal, Mandeep @ Deepu and Mannu gave khanda and iron blows on his hand and head, Vishal gave base bat blow on his jaw, Gaggu and Deepu gave iron rod blow on his hand and legs and Joga was raising *lalkara*. Request was

made to take legal action. On the basis of the complaint, formal FIR was registered and investigation commenced. Apprehending arrest, he approached the Court of learned Additional Sessions Judge, Jalandhar praying for grant of anticipatory bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide his order dated 11.04.2023. Aggrieved by the same, petitioner is before this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner has contended before this Court that the petitioner was falsely implicated in FIR on the statement of Kuldeep Kaur @ Bawi. He submits that as per the allegations made in the FIR, petitioner allegedly gave a base bat blow on the jaw of father of the complainant. He has submitted that the co-accused has already been granted anticipatory bail by this Court and thus, the petitioner deserves to be granted anticipatory bail by this Court.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that the FIR was lodged on the statement of Kuldeep Kaur @ Bawi. During investigation, it has been found that the petitioner was armed with base bat and he gave the blow of the same on the jaw of Joginder Pal Singh. On the basis of the medico legal report, this injury was declared to be grievous and thus, he has been attributed the injury for the offence under Section 326 of IPC. Needless to say that the petitioner approached the Court of learned Additional Sessions Judge, Jalandhar praying for grant of anticipatory bail. However, the same was declined by learned Additional Sessions Judge, vide his order dated 11.04.2023. Aggrieved by the same, petitioner on earlier occasion approached this Court by way of filing CRM-M-20562-2023. This Court

heard the petitioner at length, however, the same was allowed to be withdrawn vide order dated 27.04.2023 with liberty to the petitioner to surrender within seven days and in case, he does so and files any petition for the grant of bail, the same was directed to be decided expeditiously. Thereafter, the petitioner did not surrender and he approached again this Court by way of filing the present petition.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on 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.”

As per the law settled by the Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632**, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the

society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

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.

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

Hon'ble the Supreme Court in **G.R. Ananda Babu Vs. State of Tamil Nadu, 2021(1) RCR (Criminal) 843** has held that successive anticipatory bail applications ought not to be entertained on specious ground of 'Changed Circumstances'.

In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed on both counts i.e. on maintainability being second petition as well as on merits. Nothing said herein shall be treated as an expression of opinion on the merits of the case

20.07.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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