

CRM-M-31835-2023 (O&amp;M)

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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31835-2023 (O&amp;M)

Date of decision: September 14, 2023

Harjit Singh

....Petitioner

versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Japjit S. Johal, Advocate for petitioner.

Mr. Shubham Kaushik, AAG Punjab.

Mr. R.S. Bains, Senior Advocate with  
Mr. Amar Jeet, Advocate for complainant.

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**ARUN MONGA, J. (ORAL)**

Petition herein is under Section 438 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of anticipatory bail to the petitioner in case FIR No.20 dated 20.02.2023, registered under Sections 302, 148, 149, 506 of the Indian Penal Code, 1860, at Police Station, Khamano, District Fatehgarh Sahib, in which final report under Section 173 Cr. P.C. has been presented under Sections 302, 148, 149, 506, 427 of IPC against other co-accused of petitioner.

2. Learned counsel for the petitioner submits that pursuant to earlier order dated 06.07.2023 passed by this Court, petitioner has joined the investigation and has fully cooperated in the same.

3. Matter was earlier heard on 06.07.2023 and while issuing notice of motion, following order was passed by this Court:-

*"Inter alia contends that in the worst case scenario, it is the case of road rage where brother of the petitioner, in a fit of rage, allegedly hit the deceased with a brick and has been implicated as prime accused in the FIR in question. He further submits that petitioner is a young man of 23 years, serving as a soldier in the Indian Army and at no point of time had any intention for evading the investigation or appearing before the police officials. However, at the relevant time, when he was required to join the investigation he was posted at a non-family station on the border of India Pakistan and therefore could not join the investigation. He further submits that petitioner is ready and willing to join the investigation, provided he is given reasonable time to appear before the police officials since he has to*

*obtain prior permission in accordance with procedure from his superiors as he is currently posted in Machhedi (Kathua), J&K. He further submits that otherwise there is no material on record corroborating the allegations made in the FIR where the petitioner is not even named or even in the challan already presented regarding the role attributed to the petitioner in committing any offence. He further submits that petitioner was in fact not even present at the scene of occurrence. Learned counsel further claims that petitioner has a genuine alibi since at the time of occurrence he was attending a wedding of one Harpreet Singh @ Bindu and merely on the suspicion of complainant, who is not even an eye-witness, he is sought to be arrested. He further submits that as per FIR two unknown persons were also involved along with the brother of petitioner namely Jhujar Singh and Jasbir Singh who have already been arrested and on the basis of custodial statement made by Jhujar Singh that petitioner along with him and one Jasbir Singh gave a fist blow and kicked the deceased before he was fatally hit by a brick by the brother of petitioner, which led to his death, that petitioner has been made an accused. Learned counsel further submits that custodial statement per se is not admissible. He further submits that antecedents of the petitioner are also clean.*

*Notice of motion.*

*Learned State counsel, on advance service, accepts notice on behalf of respondent-State of Punjab and seeks time to file status report.*

*Requisite copies of paper book be supplied to learned State Counsel during the course of day.*

*On a Court query, learned State counsel under instructions from ASI Harinder Singh submits that police party had gone to arrest the petitioner, where he was posted, and there were told that at the relevant time the petitioner was deputed at the border and was on emergency duty involving certain cross-border insurgents, wherein he was directly involved in defending the country and his superiors did not permit him to take leave for making any statement in course of investigation.*

*Post it on 14.09.2023.*

*In the meanwhile, petitioner shall join the investigation as and when required by the investigating agency and subject to his reporting to the investigating officer within two weeks from today, no coercive steps qua arrest of petitioner shall be taken. In case, his arrest is required to be caused, the petitioner shall be released on bail by the Arresting Officer till the next date of hearing, on furnishing adequate personal bonds to his satisfaction. Petitioner shall also abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973.”*

4. *Apropos learned State counsel, on instructions from ASI Harinder Singh, states that qua petitioner’s joining investigation, following response has been given in Para-9 of status report dated 14.09.2023:*

*“9. That it is respectfully submitted that on 14.07.2023, petitioner-Harjit Singh joined the investigation of the case with the investigating officer in terms of order dated 06.07.2023, passed by this Hon’ble Court. It is further submitted that thorough investigation of the case against the petitioner-Harjit Singh is being carried out and after thorough investigation, final report of the investigation pertaining to the petitioner-Harjit Singh would be presented to the court of competent jurisdiction.*

*That in view of the above submissions the compliance of directions issued by this Hon’ble Court has been made please. It is further*

*prayed that the answering deponent undertakes to abide by any order or direction which may be passed by this Hon'ble Court in the instant case."*

5. Having heard learned counsel for petitioner and learned State counsel, I am of the view that, at this stage, petitioner is entitled to anticipatory bail for the reasons already stated in the aforesaid order vide which notice of motion was issued.
6. In the premise, present petition is allowed. Order dated 06.07.2023 granting interim anticipatory bail to the petitioner is made absolute, subject to petitioner's complying with provisions under Section 438(2) Cr.P.C. However, it is made clear that in course of investigation, if any incriminating evidence comes forthwith *qua* the petitioner, prosecution shall be at liberty to file application before the trial Court, instead of coming to this Court.
7. Pending application(s), if any, shall also stand disposed of.
8. Since learned counsel for complainant has assisted in the matter as an intervenor, there is no formal requirement to allow CRM-38697-2023 seeking impleadment of complainant, and CRM-38700-2023 seeking to file reply to the petition, and the same are dismissed.

(ARUN MONGA)  
JUDGE

September 14, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No