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

CRM-M-32038-2023 (O&M)

Date of decision: 06.07.2023

Sukhdarshan Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Jammu, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana, for respondent No.1.

Ms. Ramandeep Kaur, Advocate for

Mr. Deepak Kaushal, Advocate for respondent Nos.2 to 4.

VIKAS BAHL, J. (ORAL)

1. This is the third petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.298 dated 26.06.2022 registered under Sections 114, 147, 148, 149, 307, 323, 341, 506 of Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Sadar Dabwali, District Sirsa.

2. The petitioner along with one Kuldeep Singh had applied for anticipatory bail by way of filing a petition bearing No.CRM-M-30563-2022 and this Court, vide order dated 22.07.2022, had dismissed the said anticipatory bail. Relevant portion of the said order dismissing the anticipatory bail of the petitioner and co-accused Kuldeep Singh is reproduced hereinbelow:-

“This Court has heard the learned counsel for the parties

and has perused the paper book.

FIR in the present case had been registered on the statement of Gursewak Singh son of Makhan Singh who had stated that on 25.06.2022 in the night at 10/10.15 pm, he was going on a motorcycle with his father Makhan Singh for watering the land of Avtar Singh and when he reached near the bridge on the road, there the present petitioners alongwith Iqbal Singh, Amritpal Singh, Jaswant Singh and 2/3 unknown persons came with weapons and stopped his motorcycle by blocking the way and Iqbal Singh raised lalkara and thereafter, one unknown boy caught hold of the complainant and Iqbal Singh fired on the complainant with his pistol in order to kill him and the complainant raised his right hand in order to save himself and the shot hit on his hand and some pellets fired also hit him in his stomach and thereafter, Amrit Singh co-accused attacked the complainant with a sword on his right hand and then both the petitioners started beating Makhan Singh, who is father of the complainant and is a 70 year old person, with dandas/sticks in their hand and due to the injuries given by the said petitioners to his father, the complainant and father of the complainant i.e. Makhan Singh raised alarm and on hearing the same, Avtar Singh and Jagsir Singh came to the spot in order to save them but Jaswant Singh, who was also having pistol in his hand, fired a direct shot at the hand of Jagsir Singh and thereafter, the complainant party raised alarm and the said persons fled from the spot with their weapons and the motorcycle.

A perusal of the FIR would show that the petitioners, alongwith the other accused persons, had carried out an attack on the complainant party and in the process had injured three persons. The members of the petitioners' party

were also carrying pistols in their hands and had fired at the complainant party. Gursewak Singh received the following injuries:-

Sr. No.	Injuries	Marked	Injury Number
1	Lacerated wound of size measuring 1 cm x 1 cm present over inner aspect of right arm margins inverted blackening seen around the wound, corresponding cloth torn over the injury Adv X-Ray and surgeon opinion	No	1
2	Lacerated wound of size 1cm x 0.5 cm present over outer aspect right arm margins irregular corresponding cloth torn over the injury Adv X-Ray and Surgeon opinion	No	2
3	Multiple tiny penetrating wounds 40 to 50 in number of size varying from 0.2 cm x 0.2 cm to 0.2 cm x 0.1 cm present over inner aspect of right forearm, margins inverted blackening seen around the wound corresponding cloth have multiple tiny cuts over the injury part Adv X-Ray and Surgeon opinion	No	3
4	Multiple tiny penetrating wounds 70 to 80 in number of size varying from 0.2 cm x 0.2 cm to 0.2 cm x 0.1 cm present over chest extending to abdomen, margins inverted blackening present around the wound, corresponding cloth have multiple tiny cuts over the injury part Adv X-Ray Chest and USG Abdomen and Surgeon opinion	No	4

With respect to the abovesaid injuries, x-ray and surgeon opinion has been advised and the same is awaited.

Jagsir Singh has suffered two injuries, which also includes a gun shot injury, and the same are detailed hereinbelow:-

Sr. No.	Injuries	Marked	Injury Number
1	Lacerated wound of size 5cm x 1.5cm present over inner aspect of left arm, margins inverted and irregular blackening around wound present corresponding cloth torn over the injury. Adv. Xray and surgeon opinion	No	1
2	Multiple tiny penetrating wounds 30 to 40 in number of size varying from 0.2 cm x 0.2 cm to 0.2 cm x 0.1 cm present over abdomen margins inverted blackening seen around the wound corresponding cloth torn over the injury part. Adv X-Ray and Surgeon opinion	No	2

With respect to the abovesaid injuries, x-ray and the surgeon opinion is awaited.

Makhan Singh has suffered two injuries, one on the left hand and the other on the right knee and the same are detailed hereinbelow:-

Sr. No.	Injuries	Marked	Injury Number
1	Abrasion of size 1 cm x 0.5 cm on index finger of left hand Adv. X ray and ortho opinion	No	1
2	Abrasion of size 2cm x 0.2 cm above right knee. Adv. X-ray and ortho opinion	No	2

Although, the said two injuries are abrasions, but x-ray and Ortho opinion has been advised regarding the same and the same, even as per the stand of the State, is still awaited.

From the above, it is prima facie clear that the petitioners, alongwith other persons, had together planned the attack and had caused the abovesaid injuries in pursuance of their plan. Although, the injuries suffered by Makhan Singh are abrasions but this Court, in view of the abovesaid factors, is not inclined to grant anticipatory bail to the petitioners who had actively participated in the said occurrence. The sticks/dandas as well as the motorcycle are yet to be recovered from the petitioners and thus, their custodial interrogation is required.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

22.07.2022

**Sd/- (VIKAS BAHL)
JUDGE”**

3. A perusal of the above order would show that all the facts and

circumstances were taken into consideration and the fact that in the present case, three persons had been injured, out of which, two persons had received gunshot injuries was also borne in mind while dismissing the anticipatory bail of the petitioner and the co-accused Kuldeep Singh. Some of the injuries which have been received by the said two persons namely Gursewak Singh and Jagsir Singh were on the chest and abdomen. In the FIR, apart from other offences, the petitioner and the other accused persons were also alleged to have committed offences under Section 307 of IPC as well as Section 25 of the Arms Act, 1959. The petitioner had thereafter filed petition bearing No.CRM-M-30561-2023 by incorrectly stating that the same was the first anticipatory bail application and the same was withdrawn with liberty to file a fresh petition after making the necessary corrections vide order dated 03.07.2023. In the said order, it was specifically mentioned that in case, any such fresh anticipatory bail is filed, then all the aspects including the aspect of maintainability would be considered.

4. Learned counsel for the petitioner has submitted that in the present case, compromise (Annexure P-5) has been effected between the parties and challan has been presented against the co-accused and the witnesses have stated that they had seen the accused persons present in the Trial Court and the said persons had never attacked them and in view of the abovesaid two facts, the petitioner deserves the concession of anticipatory bail.

5. The petitioner has evaded his arrest for a period of more than 11 months. Reliance sought to be placed upon compromise (Annexure P-5) would not help the petitioner in view of the law laid down by Hon'ble the Supreme Court in **State of Madhya Pradesh Vs. Laxmi Narayan and others** reported as

2019(5) SCC 688. Hon'ble the Supreme Court in the said judgment has held that offences under Section 307 of IPC and the Arms Act would fall in the category of heinous and serious offences and are, therefore, treated to be crime against the society and not against the individual alone and that criminal proceedings for the said offences cannot be quashed in exercise of powers under Section 482 of Cr.P.C. on the ground that the parties have resolved their dispute. It was however observed that in the case of compromise, it was open to the High Court to examine as to whether incorporation of Section 307 of IPC is there for the sake of it or not and for the said purpose, it was open to the High Court to go into the aspects with respect to nature of weapon used for causing the said injury and also the part of the body, whether vital or not, on which the said injury has been caused and thus, necessarily implying that in case, the High Court was of the opinion that Section 307 of IPC has been mentioned in the FIR only for the sake of it or is not prima facie made out then the High Court could exercise the powers under Section 482 of Cr.P.C. for quashing of the FIR after taking into consideration other aspects as mentioned in the said judgment. It was further held that even while exercising the powers under Section 482 of Cr.P.C., the High Court was also required to see the conduct of the accused as to whether he was absconding and while absconding, has managed to enter into the compromise. In the said case, the High Court had allowed the quashing petition while exercising the powers under Section 482 of Cr.P.C. Hon'ble the Supreme Court, however, set aside the said judgment and the order quashing the FIR. The allegations in the FIR to the effect that firearm injury had been caused by the accused which had hit the complainant was taken into

consideration among other things. In the present case, this Court has taken into consideration the abovesaid relevant factors and finds that since, in the present case, several firearm injuries have been caused to the injured with the pistol and some of the gunshot injuries are on the chest and abdomen and thus, it cannot be said that incorporation of Section 307 of IPC in the present case is only for the sake of it. The petitioner has also been absconding and has chosen to file the present third anticipatory bail application after entering into the compromise (Annexure P-5) without surrendering before the Police and thus, even his conduct does not entitle him to anticipatory bail.

6. Even reliance placed upon the statements of the witnesses would not further the case of the petitioner inasmuch as, on account of the fact that the petitioner has been evading arrest, no challan has been presented against the petitioner and the same, as per the stand of the State, would be presented only after the petitioner surrenders or joins the investigation and since he has not been tried as an accused, it cannot be stated that the said witnesses have turned hostile qua the petitioner. It would also be relevant to note that as is apparent from paragraph 4 of the order dated 01.06.2023 passed by the Additional Sessions Judge, dismissing the anticipatory bail application of the petitioner, the co-accused of the petitioner namely Kuldeep Singh, Iqbal Singh and Jaswant Singh have been granted the concession of regular bails by the Coordinate Bench of this Court. The said regular bails have been granted to the said persons after having been in custody for a period of more than six months each. As per para 3 of the petition, it is said three persons namely Kuldeep, Jaswant Singh and Iqbal Singh against whom the challan has been

presented and in whose favour, the statements have been made by the witnesses and even the said persons have stayed in custody for a period of six months.

7. Keeping in view the abovesaid facts and circumstances, more so the facts that the anticipatory bail application filed by the petitioner along with other co-accused was dismissed by this Court vide a detailed order dated 22.07.2022 and the petitioner has evaded his arrest for a period more than 11 months and also the fact that FIR, in the present case, has been registered under various Sections including Section 307 of IPC as well as Section 25 of the Arms Act, 1959 and also in view of the law laid down in the abovesaid judgment passed by Hon'ble the Supreme Court, this Court is of the opinion that the present third anticipatory bail application of the petitioner deserves to be dismissed.

8. Accordingly, the present petition is dismissed.

9. However, nothing stated above shall be construed as an expression of opinion on the merits of the trial and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

06.07.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No