

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

108

CRM-M-33151-2023 (O&M)
Date of decision: 13.07.2023

Tasbeer Singh

....Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sumeet Goel, Sr. Advocate with
Mr. Samir Rathaur and Mr. A.K. Ranolia, Advocates
for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. P.S. Ahluwalia, Advocate for the complainant

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case FIR No.29 dated 16.04.2023, registered under Sections 323, 341, 506, 308, 34 IPC at Police Station City Samana, District Patiala.

2. To recapitulate the facts from the FIR registered on the statement of complainant-Gurbhej Singh are that on 15.4.2023 at 5.30 p.m., while he, alongwith his brother Resham Singh were standing at the front gate of their house, his uncle Gurdial Singh came with his two sons, Tarjit Singh and Tasbeer Singh, who were under the influence of liquor and having Gandasa in their hands started attacking his brother. The first attack was by the petitioner-Tasbeer Singh on the

forehead of Resham Singh with Gandasa and accused Tarjit Singh gave Gandasa blow on his head. Thereafter, both the accused gave first blows on his both eyes and nose. Again accused Tarjit Singh gave blow from reverse side of his Gandasa on the head of the injured, which fell on his arm and elbow. Resultantly, he fell on the ground and his uncle started kicking him. When Gurbhej Singh called his father Santokh Singh and another brother Ranjit Singh at the spot, all the attackers ran away. Thereafter, the injured person was taken to Civil Hospital, Samana, from where he was referred to Rajindra Hospital, Patiala and was further referred to PGI, Chandigarh. Though the FIR was registered U/s 323/341/506/34 IPC but after the perusal of the medical report, noting multiple fractures and laceration on the head and serious injuries on the body, Section- 308 IPC was added.

3. Learned counsel contends that there was a delay of 29 hours in registration of the FIR. Initially, it was registered under Sections 323, 341, 506, 34 IPC and these offences being bailable, he was granted bail by the police and he had joined the investigation. Later on Section 308 IPC was added to make the offence serious and on this ground alone, his bail was wrongly cancelled. However, the injuries suffered by the brother of the complainant were not caused by the petitioner and the only motive behind this was to make his family accede to the wrongful demands. The petitioner is ready and willing to join the investigation and will cooperate with the investigating agency.

4. Learned State counsel assisted by learned counsel for the complainant on the other hand submit that the investigation qua the petitioner still remains to be carried out. The injuries caused by him to the brother of the complainant were

declared grievous in nature. Photographs of the injured were also produced during the course of arguments. The recovery of the weapon i.e. gandasa is also yet to be effected, for which custodial interrogation is required. The accused and the complainant party being residing in the same vicinity, there is every possibility of the petitioner threatening and influencing them as also of tampering with the evidence. The petitioner may also flee from justice.

5. Heard and perused the file.

6. A gainful reference can be made to the judgment in **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, where Hon'ble The Supreme Court has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

7. In the case at hand, Resham Singh, brother of the complainant

received six injuries on his head and other parts of body. As per medical report, injuries on the head suffered by him were caused with a blunt weapon and declared grievous in nature. The motive behind the crime was to settle the dispute regarding the water channel between the two families. The petitioner alongwith his brother and father, who are stated to have come to the spot with premeditated mind, attacked the brother of the complainant with their weapons and thereby caused serious injuries. The said injuries as per the NCCT examination dated 15.04.2023 by the Department of Radiology, Rajendra Hospital, Patiala on head and face of the injured read thus:

ON BONE WINDOW:

- Linear undisplaced fracture of left parietal bone extending to involve squamous part of left temporal bone and left greater wing of sphenoid
- Fracture of left zygomatic arch seen.
- Linear undisplaced fracture of frontal bone on right side extending to involve roof of right orbit seen.
- Comminuted fracture of all walls of left maxillary sinus seen.

8. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before

arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused 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;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

9. It is manifestly clear from the above that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

10. Considering the judgments referred to hereinabove and the facts of the case at hand, particularly, the manner in which the crime has been alleged to

have been committed; the weapon used; number, seat and nature of injuries; the parties being relatives residing in the same vicinity, therefore apprehension of the petitioner influencing and threatening the witnesses; recovery of the gandas yet to be effected; his custodial interrogation stated to be required for thorough and effective investigation, which is underway, thus, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

11. In view of the foregoing discussion, the present petition being devoid of merits is hereby dismissed.

12. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

13.07.2023
S.Sharma(syr)

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