

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43542-2022

Reserved on: 30.11.2023

Pronounced on: 04.12.2023

HARJINDER SINGH AND OTHERS

. . . . Petitioners

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sandeep Berwal, Advocate, for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Vishvjeet S. Brar, Advocate, for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioners Harjinder, Lovepreet and Khushwinder pray for grant of anticipatory bail in Sessions Case No.SC/117/2021 titled '*State Vs. Kulwinder Singh @ Mika and others*', arising out of FIR No.398 dated 15.11.2020 (Annexure P1) registered at Police Station City Mandi Dabwali, District Sirsa, under Sections 147/149/354/365/506 IPC [Sections 302/325/323/34 IPC were added later on and Sections 147/149/354/365 IPC were deleted later on], pending in the Court of Id. Additional Sessions Judge, Sirsa, wherein the petitioners have been summoned to face trial as additional accused under Section 319 CrPC.

2. It is contended by Id. counsel that petitioners were found innocent during investigation on the basis of eyewitness account given by Gagan Sharma and Satish Kumar, who were present at the dhaba in front of which the occurrence took place; that trial Court has summoned the

petitioners only on the basis of statement of the complainant and her relatives, by ignoring the statements of Gagan Sharma and Satish Kumar; that custodial interrogation of the petitioners is not required; that legal position explained by the Hon'ble Supreme Court in *Hardeep Singh and others Vs. State of Haryana and others*, 2014(1)(RCR (Crl) 623, was not taken into consideration by the trial Court while summoning petitioners under Section 319 CrPC; that petitioners are ready to surrender before the trial Court and so, they be given the benefit of anticipatory bail.

3. Before advertng to the contentions as raised by ld. counsel for the petitioners, it is necessary to notice the background facts as emerged from the status report.

4. (i) FIR was lodged on the statement of Jyoti d/o Veera Singh, a resident of Village Shergarh, Tehsil Dabwali, District Sirsa, as per which on 15.11.2020 at about 12:30 PM, she was going towards the house of her aunt, when 5-6 boys of the village namely, Harjinder Singh (*petitioner No.1*), Kulwinder Singh, Baljinder Singh @ Mota, Sipu Singh, Lovepreet Singh (*petitioner No.2*) and Khushwinder Singh (*petitioner No.3*) and one relative of Sipu Singh came there riding on three bikes and started molesting her. They forcibly picked her up and brought her ahead of a petrol pump on Chautala road. She tried to get rid of them by shouting. Her mother Sukhjiti Kaur (deceased), maternal uncle Sahba Singh and brother Manjinder Singh reached there to save her. However, the above-named assailants beat them up, causing serious injuries to her mother and maternal uncle. Her mother's head was completely torn apart. Both the injured i.e., Sukhjiti Kaur and Sahba Singh were got admitted in Government Hospital, Mandi Dabwali, but on account of their serious condition, they were

referred to Government Hospital, Sirsa. It was further disclosed by the complainant that earlier there had been altercation between her mother and assailant Harjinder Singh because Harjinder Singh etc. used to sit in front of their house, which was protested by her mother.

(ii) FIR was initially registered under Sections 147 /149 /354/ 365/ 506 IPC. Copies of MLRs of both the injured were collected. Intimation was later on received regarding the death of Sukhjit Kaur at PGMIS, Rohtak. Proceedings under Section 174/175 CrPC were conducted. Scene of crime was inspected and physical evidence was collected. On 17.11.2020, Kulwinder Singh @ Nikka and Baljinder Singh @ Mota were arrested and on the basis of disclosure statement suffered by them, one iron pipe each and a motorcycle used in the crime were recovered. Injured Sahba Singh was joined in the investigation on 01.12.2020, who produced his blood-stained clothes.

(iii) Status report reveals further that during further investigation, complainant party, accused party and independent witnesses were joined and it was found that only Kulwinder Singh @ Nikka, Baljinder Singh @ Mota and one Arshdeep Singh @ Kakka were involved in the commission of the crime; whereas other persons named in the FIR, namely, Harjinder Singh (*petitioner No.1*), Loverpreet Singh (*petitioner No.2*), Khushwinder Singh (*petitioner No.3*) and Sandeep Singh @ Sipu were innocent. No offence was found to have been committed under Section 147/149/354/365 IPC. After completion of the investigation, initially the challan was submitted against Kulwinder Singh @ Nikka, and Baljinder Singh @ Mota. Later on, Arshdeep Singh @ Kakka was also arrested and supplementary challan was filed qua him under Section 173(8) CrPC.

(iv) After framing of the charges by the trial Court, 4 prosecution witnesses were examined including complainant Jyoti, eyewitness Manjinder Singh and injured eyewitness Sahba Singh and then application under Section 319 CrPC was moved by the complainant/prosecution, which was allowed and the three petitioners i.e., Harjinder Singh, Loverpreet Singh & Khushwinder Singh along with Sipu Singh were summoned to face trial as additional accused.

(v) Status report further says that petitioners are not involved in any other case nor their custody is required by the police, but there is no ground to grant them anticipatory bail.

5. Having considered submission of both the sides, this Court finds the present case to be unfit for grant of anticipatory bail. It is conceded during arguments by ld. counsel for the petitioners that order dated 12.08.2022 (Annexure P3), whereby petitioners along with Sipu Singh s/o Mohan Singh have been summoned as additional accused under Section 319 CrPC to face trial, has not been challenged till date. Besides, name of petitioners is specifically disclosed to be the assailants in the initial version of FIR itself. Their names have been reiterated by all the three eyewitnesses namely, Jyoti, Manjinder Singh and Sahba Singh as is apparent from their testimony, which is also referred by the trial Court in its order dated 12.08.2022 (Annexure P3).

6. The contention of ld. counsel for the petitioners to the effect that petitioners were found innocent on the basis of statement of Gagan Sharma and Satish Kumar, who were present at the Dhaba in front of which the occurrence took place, cannot be considered at this stage, having regard to the fact that none of these witnesses have been examined during trial and

further considering the fact that in view of the statement of the complainant and the injured eyewitness, no significance can be attached at this stage to the statement of Gagan Sharma and Satish Kumar made under Section 161 CrPC.

7. Other contention of ld. counsel for the petitioners to the effect that custodial interrogation of the petitioners is not required as stated in the status report and so no purpose shall be served by taking the petitioners in custody, has also no merit.

8. As observed above, petitioners have been named as assailants in the initial version itself. There used to be altercation between Harjinder Singh (*petitioner No.1*) and deceased as has been testified in detail by PW1 Jyoti. Petitioners along with others tried to molest her, abducted her and when her mother, brother and uncle (mama) tried to save her, the petitioners and others caused injuries to her mother i.e., deceased Sukhjit Kaur and Sahba Singh, resulting in the death of Sukhjit Kaur. Simply because custodial interrogation is not required, cannot in itself be a ground to grant anticipatory bail. The Court cannot ignore the serious attribution to the petitioners and the gravity of offence.

9. Having regard to all the facts and circumstances as noted above, but without commenting anything further on merits of the case, this Court is not inclined to grant benefit of anticipatory bail to the petitioners.

Dismissed.

(DEEPAK GUPTA)
JUDGE

04.12.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No