

CRM-M-48670-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48670-2023 (O & M)

Date of decision:31.10.2023

Alim

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sunny Tyagi, Advocate,
for the petitioner.

Mr. Ravish Kaushik, Addl.A.G., Haryana.

Mr. Vinay Kumar Pandey, Advocate,
for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.16 dated 24.01.2023 under Sections 148, 149, 323, 506, 427 and 307 IPC and Section 25 of the Arms Act, 1959 registered at Police Station Rozko Meo, District Nuh.

2. The present FIR came to be registered on the statement of one Shokeen son of Ismail who presented a complaint in the Police Station Rojka Meo against Alizan son of Ramjan, Alim (petitioner) son of Ramjan, Rashid son of Inder, Rashid son of Mustak, Shoket son of Sabudeen, Jamshed son of Jalli, Liyakat son of Istak, Sajjed son of Ashu, Jamil son of

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of Isha, Sakir son of Isha, Ashu son of Kamrudeen, Umar son of Jamshed, Lifakat son of Ashu, Tamil son of Iqbal, Sarfudeen son of Sheju, Juber son of Imrat and Javed son of Imrat. He stated that the accused persons were inimical to him on account of Panchayat elections and had threatened him and his family earlier on a number of occasions. On 24.01.2023, while he was present at his house, the accused came there carrying various weapons. One Liyakat son of Ishtak brought a tractor trolley loaded with small stones and bricks and accused-Rashid son of Inder brought a dumper bearing registration No.HR-38-S-8795. On coming to his (complainant's) house, the accused attacked his house with stones and bricks. On hearing the noise of the quarrel, his family members including Smt. Khatiza wife of Usman, Fatta wife of Ash Mohd. Sarifan wife of Irfan, Suhail son of Mohd. Farook, Ash Mohd. son of Rasul Bax, Shokeen son of Ismail, Afroj daughter of Nawabdin, Arfina wife of Akram, Abdul son of Alladin, Sakib son of Arshad and Namjida @ Namo daughter of Kashim came to the spot and they attempted to save the him (complainant). However, the accused attacked them with *lathis*, *dandas*, iron rods and illicit weapons. Accused-Alim (petitioner) son of Ramjan and Alizan son of Ramjan attacked Sarifan, Namjida, Arfina, Afroj, Abdul Sakib, etc. with an intention to kill them with illegal arms and weapons causing them injuries. The remaining accused also attacked his family members with *lathis*, *dandas* and iron rods and also fired upon them. Accused Rashid struck his dumper with the wall of the house of Jamshed son of Gul Kha damaging the same. On hearing the noise from the incident, many persons came to the spot. Information was given to the police who came to the spot after which they fled away.

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3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case on account of an election dispute that had taken place in the village in December, 2022. Regarding the present occurrence, a cross-case bearing FIR No.17 dated 30.01.2023 under Sections 148, 149, 323 and 506 IPC, Police Station Rozka Meo had been registered on the complaint given by a co-accused Umar Mohd. against the present complainant party as multiple persons from the present accused party had received injuries. As it was a case of version and cross-version, therefore, it was a matter of trial as to which party was the aggressor side. Thus, the petitioner was entitled to the grant of concession of anticipatory bail, moreso, when three co-accused had been granted the similar concession.

4. The learned counsel for the State, on the other hand, has filed a status report dated 28.10.2023 by way of an affidavit of Om Parkash, HPS, Deputy Superintendent of Police, Traffic, Crime & Law and Order, Nuh. The same is taken on record. While referring the aforesaid status report, he contends that as many as six persons from the side of the complainant party received fire-arm injuries, namely, Sarifan, Khatiza wife of Usman, Fatta wife of Aashu, Shokeen son of Ismail, Abdul Karim son of Alladdin and Afroz wife of Soyab. FIR No.17 dated 30.01.2023 which is stated to be a cross-version, however, came to be registered on 30.10.2023 and that too under Sections 148, 149, 323 and 506 IPC only. As per police investigation, the petitioner was the main accused. There were multiple photographs of the petitioner showing him to be present at the spot armed with an illegal weapon alongwith a mob. The recovery of the illegal weapon was to be

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effected from the petitioner. Therefore, keeping in view the seriousness of the allegations as also the fact that the recovery of the illegal weapon used in the occurrence was to be effected from the petitioner, custodial interrogation was certainly necessary and the petitioner was not entitled to the concession of anticipatory bail.

5. The learned counsel for the complainant has placed on record photographs. The same are taken on record as Mark 'A' and 'B'. While referring to the same, he contends that the petitioner is clearly visible in the photographs and is seen carrying an illegal fire-arm. Even after the present occurrence, he alongwith his companions attempted to assault the complainant for which he (complainant) had lodged another complaint with the investigating agency. The purported cross-version was nothing but an attempt to set-up a false plea of self-defence. Whereas the injuries suffered by the complainant party were attracting Section 307 IPC, those purportedly suffered by the present accused party were only simple in nature. In view of the allegations levelled against the petitioner as also his conduct post-registration of the present FIR of threatening the complainant, he was not entitled to the grant of the concession of anticipatory bail.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima

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facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and***

he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail. ”

8. As per the prosecution case, as many as 20 persons assaulted multiple persons of the complainant party. The petitioner and his co-accused Alizan are stated to be the main accused. The petitioner who was allegedly carrying an illegal fire-arm has fired at the complainant party injuring six persons who have received gun-shot injuries. A perusal of the photographs would show that the petitioner is carrying an illegal weapon in his hand and is a part of a mob. Even after the registration of the FIR, he is stated to have threatened and attempted to assault the complainant. Therefore, the conduct of the petitioner leaves a lot to be desired. So far as the co-accused of the petitioner are concerned, some of them have been granted the concession of anticipatory bail as no specific role has been attributed to them. Whereas the petitioner has been specifically attributed fire-arm injuries. Therefore, the petitioner cannot claim parity with the co-accused who have been granted anticipatory bail.

9. Therefore, keeping in view the seriousness of the allegations levelled against the petitioner, the fact that the recovery of the illegal weapon is to be effected from him and as the offence stands *prima facie*

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established, his custodial interrogation is certainly required to take the investigation to its logical conclusion and in the interest of justice.

10. In view of the above discussion, I do not find any merit in the present petition and the same stands dismissed.

11. However, the observations made hereinabove are only for the purpose of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

October 31, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No