

CRM-M-50687 of 2022

2023:PHHC:041250

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

CRM-M-50687 of 2022

Date of decision: 20.03.2023

Jagdeep Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Vipul Babuta, Advocate,
for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

None for the complainant.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.0241 dated 05.09.2022 under Sections 302, 336, 34 IPC and Section 25, 54, 59 of the Arms Act, 1959, registered at Police Station Jandiala, District Amritsar Rural (Punjab).

According to the prosecution, on 04.09.2022 petitioner-Jagdeep Singh took complainant Talwinder Singh and his brother Sukhchain Singh with him to the house of his in-laws at village Nijjarpura where the in-laws family of the petitioner had organized a party on account of marriage of his brother-in-law. At about 11.00 p.m.

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while the party was going on, co-accused Rajbir Singh alias Raja as well as petitioner-Jagdeep Singh started firing from their pistols. Besides them, two other young persons also started firing from their pistols. When Sukhchain Singh-brother of complainant prevented them from firing shots, co-accused Rajbir Singh alias Raja became infuriated and he fired a shot from his pistol at Sukhchain Singh which hit him on his neck and he fell down on the ground. He was taken to Amandeep Hospital, Amritsar where doctors declared him brought dead. On the basis of these allegations, FIR was registered.

On issuance of notice of motion, status report by way of affidavit of Gurmit Singh, Deputy Superintendent of Police (Headquarters), Amritsar (Rural), has been filed on behalf of the respondent-State.

Learned counsel for the petitioner contended that petitioner is innocent and has been falsely implicated in the present. He further submits that no injury has been attributed to the petitioner. The firearm injury on the person of deceased Sukhchain Singh is attributed to co-accused Rajbir Singh. He further submits that petitioner is not involved in any other case and he is ready and willing to join the investigation.

Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner by submitting that in view of seriousness of allegations against the petitioner, his custodial interrogation is required.

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I have heard learned counsel for the parties and perused the record.

Perusal of the FIR shows that it was the petitioner who had taken the complainant and his brother deceased Sukhchain Singh with him to the house of his in-laws. Although, firearm injury on the person of deceased Sukhchain Singh has been attributed to co-accused Rajbir Singh, there is specific allegation against the petitioner that he also fired shot from his pistol. A life has been snuffed out in the said incident.

Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011(1) RCR (Criminal) 126*** after considering its earlier judgments laid down certain factors and parameters to be considered while considering application for anticipatory bail :

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail

- 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.*

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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.*

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123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. 124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

Hon'ble Supreme Court in ***Jai Prakash Singh v. State of Bihar and another, 2012(2) R.C.R.(Criminal) 251*** held as under: -

*"18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: ***D.K. Ganesh Babu v. P.T. Manokaran & Ors., 2007(2) RCR (Criminal) 161 : 2007(2) R.A.J. 342 : (2007)4 SCC 434; State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors., 2007(4) RCR (Criminal) 581 : 2007(5) R.A.J. 489 : (2008)1 SCC 213; and Union of India v. Padam Narain Aggarwal & Ors., 2008(4) RCR (Criminal) 665 : 2008(6) R.A.J. 10 : (2008)13 SCC 305.*"***

Hon'ble Supreme Court in ***Singashan Singh v. State of Bihar and others, 2015(1) R.C.R.(Criminal) 786*** held as under: -

*"13. In ***Jai Prakash Singh v. State of Bihar, 2012(2) RCR (Criminal) 251 : 2012(1) Recent Apex Judgments (R.A.J.) 462 : (2012) 5 SCC 690***, this Court, on a perusal of Section 438 of the Code, took note of the pre-conditions*

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to granting anticipatory bail and laid emphasis on the nature and gravity of the accusation.

*"18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See: **D.K. Ganesh Babu v. P.T. Manokaran and Ors.**, 2007(2) RCR (Criminal) 161 : (2007) 4 SCC 434; **State of Maharashtra and Anr. v. Mohd. Sajid Husain Mohd. S. Husain and Ors.**, 2007(4) RCR (Criminal) 581 : (2008) 1 SCC 213; and **Union of India v. Padam Narain Aggarwal and Ors.**, 2008(4) RCR (Criminal) 665 : 2008(6) Recent Apex Judgments (R.A.J.) 10 : (2008) 13 SCC 305).*

*" 14. In the case of **Ranjit Singh v. State of Madhya Pradesh**, 2013(4) RCR (Criminal) 600 : 2013(5) Recent Apex Judgments (R.A.J.) 492 : 2013 (12) SCALE 190, the appellant therein was charged with the offences, inter alia, under Section 34 and Section 302 of the IPC. While discussing the power to grant bail by the Court, this Court stated that:*

" ...It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course."

*Furthermore, this Court, in the aforesaid case, took notice of **Chaman Lal v. State of U.P.**, 2004(3) RCR (Criminal) 984 : (2004) 7 SCC 525; **Prasanta Kumar Sarkar v. Ashis Chatterjee**, 2010(4) RCR (Criminal) 909 : 2010(6)*

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Recent Apex Judgments (R.A.J.) 317 : (2010) 14 SCC 496; Ash Mohammad v. Shiv Raj Singh and Anr., 2013(1) RCR (Criminal) 277 : 2012(6) Recent Apex Judgments (R.A.J.) 361 : (2012) 9 SCC 446; and Central Bureau of Investigation v. V. Vijay Sai Reddy, 2013(3) RCR (Criminal) 252 : 2013(3) Recent Apex Judgments (R.A.J.) 718 : 2013 (7) SCALE 15 to show that, inter alia, the nature and gravity of the accusation is one of the primary factors to be borne in mind while considering any application for bail.

15. *This Court has time and again held that neither anticipatory bail nor regular bail can be granted as a matter of rule. Sections 438 and 439 of the Code substantially embody the same principle so far as appreciation of the case as to whether or not a bail is to be granted. The judicial discretion vested in the Court requires to be appropriately exercised with proper application of mind in determining whether a case is a fit case for grant of anticipatory bail or not. The 41st Report of the Law Commission of India recommended the introduction of a provision for grant of anticipatory bail has observed that "power to grant anticipatory bail should be exercised in very exceptional cases". It should only be exercised in exceptional cases when the court is satisfied that the person to be enlarged on anticipatory bail would not misuse his liberty.*

16. *It is trite that in crimes of heinous nature, unless the Court is prima facie satisfied, based on the material available on record, that an exceptional case is made out by the accused person so as to conclude that he would not interfere with the process of law, the Court may consider granting anticipatory bail."*

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Therefore, considering the nature of the allegations contained in the FIR, the custodial interrogation of the petitioner is necessary to excavate the truth, which are serious in nature. Hence, the petitioner does not deserve the concession of anticipatory bail.

In view of the above, the present petition is dismissed.

Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

20.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No