

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

CRM-M-52146-2022(O&M)

Date of Decision:-25.01.2023

Gagandeep Singh @ Gagna.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. K.S. Brar, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Mr. Rohit Singla, Advocate &
Mr. Abhay Gupta, Advocate for the Complainant.

JASJIT SINGH BEDI, J.

The Prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.232 dated 11.09.2022 under Sections 307, 323, 324, 341, 148, 149, 506, 427 IPC and Sections 326 IPC added later on vide DDR No.23 dated 5.10.2022 registered at Police Station Civil Lines, Bathinda, District Bathinda.

2. The present FIR came to be registered at the instance of Gurmeet Singh who stated that he was an employee with the Electricity Board. A few days prior to the occurrence he had started PTE Study from Brills School, Ajit Road, Bathinda and he travelled there daily. His friend Gurjot Singh and Gurpreet Singh who were studying with him at Brills School took him from the bus stand in their car and after closing hour they left him at the bus stand. On 07.09.2022 he and his friend had a lunch break and had gone to bring their meals from the car standing near the street. When they reached near the car, then 8/10 unidentified persons on four motor cycles who were carrying deadly weapons encircled him. He could

recognise Gagandeep Singh @ Gagna (petitioner) and Surjit Singh @ Shivraj Singh (since granted bail by the Court of Additional Sessions Judge Bathinda vide order dated 29.11.2022). The petitioner raised a *lalkara* that he should be finished. Surjit Singh fired at him. He (Complainant) got frightened and pushed another boy in front of him and ran towards Gali No.8, Ajit Road. Then all the boys chased him. While running, his foot slipped and he fell down. Then Gagandeep Singh @ Gagna (petitioner), Surjit Singh @ Shivraj Singh and 08 unidentified person attacked him. The petitioner took his phone and broke the same. Thereafter the petitioner gave a *gandasa* blow aimed at his head with an intention to kill him. In order to save himself, he (complainant) raised his left arm. The *gandasa* struck the elbow of his left arm. In the meantime, Surjit Singh @ Shivraj Singh gave him a *gandasa* blow with an intention to kill him. In order to save himself (complainant) he raised his right arm. The *gandasa* struck the upper part of his right arm elbow. Thereafter Surjit Singh @ Shivraj Singh gave him a *gandasa* blow and he in order to save himself he raised both his arms on his head. The *gandasa* struck below his left arm elbow. Thereafter unknown persons gave rod blows to him on his right leg continuously. The rod blow struck the centre of his leg. Thereafter, they all gave him more beatings. Then Gagandeep Singh @ Gagna asked Surjit Singh @ Shivraj Singh to take out a pistol and fire at him (complainant). Then he (complainant) raised a noise of *maarta maarta*. At this the accused fled from the spot on their motor cycles along with their respective weapons. Had the people not gathered at the spot the accused would have killed him(complainant).

3. When this matter came up for hearing on 14.11.2022 the following order was passed:-

“ *Prayer in this petition is for grant of anticipatory bail in FIR No.232 dated 11.09.2022 under Sections 307, 323, 324, 341, 148, 149, 506, 427 IPC and Section 326 IPC (added later on), registered at Police Station Civil Lines, Bathinda, District Bathinda.*

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of Gurmeet Singh, when he had gone for lunch, 8-10 unknown persons came on motorcycles, out of which, he could identify Gagandeep Singh @ Gagna and Surjit Singh @ Sawraj. Petitioner Gagandeep Singh @

Gagna raised a lalkara that the complainant be taught a lesson. When he tried to run away, the assailants chased him and thereafter, Gagandeep Singh @ Gagna (petitioner) gave a gandasi blow, which hit on his left elbow. Thereafter, co-accused Surjit Singh gave gandasi blow on his right arm and another blow was given by him, which hit on left elbow of the complainant.

Learned counsel further submits that as per the MLR, injuries No.1 & 4 were declared grievous in nature, however, injuries No.2 & 3 were simple in nature, therefore, it will be a matter of trial whether Section 307 IPC is made out or not. It is also submitted that without prejudice to his right of defence, the petitioner is ready to pay Rs.50,000/- to the victim towards medical expenses.

Notice of motion.

On asking of the Court, Mr. Navneet Singh, DAG, Punjab accepts notice on behalf of the respondent-State and has, however, submitted that the allegations are serious and in the CCTV available at the spot, the petitioner was seen chasing the complainant with weapon. List again on 23.01.2023.

In the meantime, the petitioner is directed to appear before the Investigating Officer within a period of 10 days to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

- 1. He shall make himself available for interrogation by a police officer as and when required;*
- 2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. He shall not leave India without previous permission of the Court.*

This will, however, be subject to the condition that without prejudice to his right of defence, the petitioner will hand over a demand draft of Rs.50,000/- favouring the victim to the Investigating Officer, which will be further handed over to victim-complainant Gurmeet Singh.

In case the amount by way of demand draft is not accepted by the victim-complainant, the same will be kept with the Investigating Officer.

4. The Counsel for the petitioner contends that the petitioner has been attributed a *gandasa* blow on the left arm elbow of the injured-

complainant. The same injury has been attributed to Surjit Singh @ Shivraj Singh. Only one of the two could have caused the injury in question. Surjit Singh @ Shivraj Singh was arrested and has been granted the concession of regular bail. Therefore, the petitioner ought to be granted the concession of anticipatory bail as no case for his custodial interrogation was made out. In terms of the order dated 14.11.2022, the petitioner has prepared a draft and handed it over to the IO as the complainant has refused to accept it. Since the petitioner has joined investigation and cooperated with the same, no case for custodial interrogation is made out.

5. The Counsel for the State on the other hand contends that the petitioner is duly named in the FIR. A specific injury has been attributed to him. The said injury on the elbow attracts Section 326 IPC. Merely because the co-accused Surjit Singh @ Shivraj Singh had been granted the concession of regular bail, the petitioner was not entitled to the grant of anticipatory bail because there is a CCTV footage to show that all the accused collectively assaulted the complainant. He has referred to photographs culled out from the CCTV footage to substantiate his argument. Though he has joined investigation but the nature of the allegations and the manner of the assault did not entitle him to the grant of anticipatory bail.

6. The Counsel for the complainant on the other hand while opposing the grant of bail contends that the complainant was brutally beaten up by the accused including the petitioner. The nature of the allegations did not entitle him to the grant of anticipatory bail. Even otherwise, the petitioner could not claim parity with the case of Surjit Singh @ Shivraj Singh because he had been granted the concession of regular bail.

7. I have heard learned Counsel for the parties.

8. In the present case the petitioner is duly named in the FIR and has been attributed a grievous injury with a *Gandasi* on the elbow of the complainant. No doubt the said injury is purportedly attributed to the co-accused Surjit Singh @ Shivraj Singh as well who has been granted the concession of regular bail. However, that fact in itself would not entitle the petitioner to the grant of anticipatory bail. A perusal of the photographs placed on record as Mark-A would show that the petitioner along with his co-accused are armed and brutally assaulting the complainant. The manner

in which the occurrence took place makes out a clear case for the invocation of Section 148 & 149 IPC. Therefore, the petitioner certainly does not deserve the concession of anticipatory bail.

9. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** 2022 Live Law (SC) 870 held that merely because the 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 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.

10. In the present case, the allegations as levelled by the complainant have been duly corroborated by the CCTV footage which shows that a *prima facie* case is certainly made out against the petitioner for having committed an offence under Section 326 IPC along with the co-accused. Therefore, no case for the grant of anticipatory bail is made out.

11. In view of the above, I find no merit in the present petition and the same is therefore dismissed.

12. The investigating agency is directed to return back the draft of Rs.50,000/- to the petitioner against proper receipt and identification.

13. However, it is made clear that the observations made in this order are only for the purposes of deciding this bail application and the Trial Court is free to proceed with the Trial independent of any observations made herein.

(JASJIT SINGH BEDI)
JUDGE

January 25, 2023

Vinay

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