

208

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

CRM-M-53773-2022
Date of Decision: 01.03.2023

Bharpur Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Ekta Chauhan, Advocate for
Mr. Varun Katyal, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG, Punjab.

HARSH BUNGER, J. (Oral)

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail in case FIR No.245 dated 14.10.2022, under Sections 341, 323, 506, 120-B, 148 and 149 of the Indian Penal Code, 1860, (Section 379-B added later on), registered at Police Station Dharamkot, District Moga, Punjab.

On 21.11.2022 the following order was passed by a co-ordinate Bench of this Court :-

“Through instant petition under Section 438 of Code of Criminal Procedure, 1973, the petitioner is seeking grant of anticipatory bail in FIR No. 245 dated 14.10.2022, under Sections 341, 323, 506, 120-B, 148 and 149 of IPC (Section 379-B of IPC added later on) registered at Police Dharamkot, District Moga.

Learned counsel for the petitioner submits that Section

379-B has been added later on just to make the alleged offence non-bailable. There is no allegation against petitioner of snatching of pistol of the complainant. As per FIR, alleged offence was committed on the asking of Sarpanch Gurnishan Singh who has been granted interim bail. The pistol allegedly snatched by co-accused was actually handed over to police by villagers, thus, there was no question of snatching by petitioner.

Notice of Motion returnable for 5.1.2023.

On the asking of the Court Mr. Amish Sharma, AAG, Punjab, who is present in Court, accepts notice on behalf of respondent-State and seeks time to apprise the court factual position.

Intent of arrest and reason of denial of bail is to secure the appearance of the accused at the time of trial. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction.

The object of arrest is neither punitive nor preventive. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by article 21 but also freedom guaranteed by article 19(1) of our Constitution. Life of every human being is most precious gift of God and everyone has very limited span of life which cannot be spoiled on account of incompetence, personal grudge, vengeance of someone; or brutal, illegal, unethical action of the State machinery. Except habitual offender, commoners living simple life after arrest lose self-respect and confidence within himself as well State. It has become very common to put criminal law in motion even though dispute involved is purely contractual or civil in nature. Many times arrest entails deprivation of source of income of entire family besides forever stigma in a closely knit society like ours. There is neither mechanism to compensate a man who is later on found innocent nor acquittal can return valuable time, energy, status, future of family members especially children which is lost on account of incarceration of bread earner of the family. Imprisonment before conviction is a sort of punishment especially when rate of conviction in our country is abysmally low.

Keeping in mind:

(i) The prosecution has not adduced any plausible reason to believe that custodial interrogation is inevitable and there is no alternative to investigate the matter except to take the petitioner in custody;

(ii) *The State has not adduced any evidence indicating that there is possibility of petitioner being flee from justice which would defeat the ends of justice and frustrate object of proceedings initiated against the petitioner;*

(iii) *The Petitioner is ready to join the investigation and co-operate the investigating officer;*

(iv) *The Petitioner is not involved in any other offence;*

(v) *The petitioner is resident of Moga and FIR is pending at Moga, thus jurisdictional court and police authorities have direct access over the activities of the petitioner;*

(vi) *There is no allegation of snatching against petitioner and interim protection has already been granted to co-accused; the petitioner is directed to join the investigation on 29.11.2022 or any other date as given by the investigating officer and would remain present as and when summoned by Investigating Officer and in the event of arrest, the petitioner shall be admitted to interim bail on his furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the conditions as specified under Section 438 (2) Cr.P.C.*

If the arresting officer does not permit the petitioner to join the investigation, the petitioner would appear before the learned Illaqa Magistrate who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this Court.”

Learned counsel for the petitioner submits that pursuant to the aforesaid order, the petitioner has joined the investigation.

Learned State counsel on instructions from ASI Manjeet Singh has not disputed the aforesaid fact of joining of investigation by the petitioner and submits that his custodial interrogation is not required at this stage.

Heard learned counsel for the parties.

Since the petitioner has joined the investigation and his custodial interrogation is not required at this stage, the present petition is allowed and the ad-interim order dated 21.11.2022 passed by the Co-ordinate Bench of this Court is made absolute.

However, the petitioner shall continue to join the investigation

as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.

It is made clear that if the petitioner fails to comply with any of the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioner.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.

The petition is accordingly disposed of.

01.03.2023
Himani

(HARSH BUNGER)
JUDGE

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