

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

CRM-M-51522-2023

Date of Decision : November 22, 2023

Jagdeep

.....Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amit Khatkar, Advocate
for the petitioner.

Mr. Kanwar Sanjeev Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Sections 438 Cr.P.C. is for the grant of concession of anticipatory bail to the petitioner in case FIR No.537 dated 21.9.2023, registered under Sections 147, 148, 149, 323, 325, 341 and 506 IPC at Police Station Rania, District Sirsa.

2. The present FIR came to be registered at the instance of Ram Niwas son of Udey Ram r/o Sultanpuria aged about 42 years Mobile No.99915-71563 and reads as under :-

“that I am a resident of the above address and run a grocery shop in village Sultanpuriya. On dated 13.09.2023, I had gone from my home to Rania Tehsil driving my motor cycle no HR 44S-8698 to bring my wife Rajbala from Rania Tehsil. At about 5 pm. when I

reached near Inter-Lock Brick Factory, Sultanpuria-Rania Road, they came from the front and stopped my motorcycle and Jagdeep alias Jaggu and Raju sons of Darshan Singh Majhabi Sikh residents of Sultanpuria and Bunty son of unknown resident of Nanuana Road, Rania along with 3 other boys came. Two boys caught me. Jagdeep took a rod like iron rod in his hand and hit me on my right leg, then Raju took a stick in his hand and hit me on the back of my head, then Bunty also abused and kicked me. Then I fell down. Raju took out 8 thousand rupees from my pocket. Then Raju took out the gold ring I was wearing on my finger. Then Jagdeep scared me by taking out a pistol from his pants, which seems to be as unlicensed pistol. Thereafter, I shouted and on seeing the passers-by coming, Jagdeep, Raju, Bunty and 3 others ran away from the spot with their weapons and sticks and rods. While running, they stated that I got saved today but will be eliminated in case I would come before them in future. Thereafter my wife Rajbala came to the spot after getting the information and arranged the facilities and took me to CHC Rania for treatment. The doctor there referred me to Government Hospital Sirsa and got X- ray and CT scan done in Government Hospital Sirsa. On 14.09.2023, my wife brought me from Government Hospital Sirsa to Satguru Pratap Singh Sirsa for better treatment. I am undergoing treatment at Satguru Pratap Singh Sirsa. The motive behind the occurrence is that Jagdish had abused me two days before this fight. Legal action should be taken against the above accused Raju, Jagdeep, Bunty and three

others. I have got recorded my statement, read it and found to be correct. Sd/- Ram Niwas. Attested Vijay Singh HC, PS Rania, dated 18.09.2023. Police proceedings:..."

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Very vague and broad allegations have been levelled by the complainant to implicate a number of persons. There was a delay of 08 days in filing of the FIR. The occurrence took place on 13.9.2023, whereas the complaint was filed on 18.9.2023 and ultimately the FIR was lodged only on 21.9.2023. This delay was fatal to the prosecution case. Even from the investigation, the allegations of a pistol being pointed at the complainant and snatching of the gold ring were not found to be correct. As the petitioner had joined the investigation and had cooperated with the same, he was entitled to the concession of anticipatory bail.

4. The status report by way of affidavit dated 20.11.2023 of the Deputy Superintendent of Police, Ellenabad has been filed and the same is taken on record. While referring to the same, the learned State counsel along with the counsel for the complainant, contend that it was incorrect to state that the FIR had been registered after a delay of 08 days. In fact, the occurrence had taken place on 13.9.2023. The police proceedings would reveal that on the very same day, information has been received by the police officials who chose not to go to the hospital as they were busy in other

duties. It was in that situation that the statement was made to the Investigating Agency on 18.9.2023 leading to the registration of the FIR on 21.9.2023. As per the medical evidence on record, the complainant had received a fracture of the tibia and two metal rods had to be inserted on the conducting of an operation. Even today, the injured was unable to walk properly. They also contend that though the petitioner had joined the investigation, that fact by itself does not entitle him to the grant of anticipatory bail, looking into the seriousness of the allegations, and the manner in which the offence was committed.

5. I have heard learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", 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 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”.

7. In the instant case, as is apparent, there is absolutely no delay in the registration of the FIR. The petitioner is the main accused. The injury attributed to the petitioner on the person of the complainant led to a fracture of the tibia. An operation had to be conducted and rods had to be inserted. Even at this point in time, the injured is unable to walk properly. Therefore, the allegations levelled against the petitioner are indeed extremely grave. Merely because he had joined the investigation would not in itself entitle the petitioner to the grant of anticipatory bail once the offence has been *prima facie* established.

8. In view of the serious nature of the allegations and the fact that the offence *prima facie* stands established, I find no ground to grant the concession of anticipatory bail to the petitioner and, therefore, the present petition stands dismissed.

9. However, the observations made here-in-above are only for the purposes 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.

November 22, 2023
satish

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO