

CRM-M-50438-2022
CRM-M-54371-2022

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

CRM-M-50438-2022
Date of decision : 07.02.2023

Rashpal Kaur and anotherPetitioners

Versus

State of Punjab Respondent(s)

CRM-M-54371-2022

Gurcharan Singh @ Binder
...Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms.Neetu Singh, Advocate for the petitioner(s)
in CRM-M-50438-2022

Rana Harjasdeep Singh, Advocate for the petitioner(s)
in CRM-M-54371-2022

Mr.Manipal Singh Atwal, DAG, Punjab

Mr.Rakesh Bhatia, Advocate for the complainant

AMAN CHAUDHARY, J.

Both the petitions have been filed for grant of anticipatory bail
in case of FIR No.0047 dated 21.2.2022, registered under Sections 452,
427, 447, 511, 379B, 506, 509, 148, 149 IPC at Police Station Sahnewal,
District Police Commissionerate Ludhiana.

Briefly put, the facts as per the FIR, which has been registered
on the basis of the statement of one Inderveer Singh are that he is doing the

business of bicycle trading. In the year 1993, he purchased the land in question i.e. 6 acres and a built up house in it, in the name of his firm M/s Bicycle Manufacturing Corporation from 13 persons and sale deed was executed in the name of the firm. For maintenance of the said land and house, one Inderjit Singh, resident of village Khatorra near Rara Sahib, District Ludhiana was hired. On 20.2.2022 at about 12 o' clock, said Inderjeet Singh made a call to his nephew Tejpratap Singh that two women, namely Rachpal Kaur, her daughter, daughter's husband, Gurcharan Singh @ Binder Singh, who described himself as a police officer, Bati, Lavi, Balwinder Singh Panch and 15/20 unidentified persons, who were holding sticks, hockies, rods, swords, came at the main gate of the house and have broken the cameras. After breaking the lock at the main gate, they entered the house and destroyed the chairs, tables and utensils lying in the room and took the gas stove from the kitchen. Gurbachan Singh also snatched the mobile phone from Inderjit Singh. They are trying to occupy the house. On this Tejpartap came there and saw the situation. On this Gurbachan Singh encouraged rest of them and told them to catch and kill them. They started pushing them and we made an alarm 'marta marta' and ran from there to save their lives including Inderjit Singh. They also abused them and threatened them. From the house, they have broken the cameras, stolen DVR, gas stove, mobile phone of Inderjit Singh.

Learned counsel appearing on behalf of petitioners, Rashpal Kaur and Parminder Kaur are innocent and no offence has been committed by them. They have been falsely implicated in the present case on the

vague allegations, which is a matter of trial to conclude the evidence against them. Thus, she prays for grant of anticipatory bail to them.

Learned counsel appearing on behalf of petitioner, Gurcharan Singh @ Bhinder states that the complainant is neither the owner nor in possession of the property in question and he wants to grab the property that belongs Rashpal Kaur, so that she can sell it. The petitioner being her relative has been falsely implicated in the present case.

On the other hand, learned counsel for the State assisted by learned counsel for the complainant states that the petitioners have tried to criminally trespass into the property of the complainant and committed theft. He further states that as per the report of the revenue authority, Rashpal Kaur has left with no share in the Khewat. Gurcharan Singh was infact in home-guard and was dismissed from service, but was posing as a police officer and played active role in committing the offence by coming alongwith 15/20 unidentified persons including Rashpal Kaur and Parminder Kaur, committing the offence and took away DVR. The investigating agency is in possession of CCTV footage of the adjoining houses showing the petitioners. The investigation is still going on and the recovery is yet to be effected for this custodial interrogation of the petitioners are required.

Heard.

The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory

bail.

In the present case, the name and the role of the petitioners have been specifically mentioned in the FIR. The petitioners alongwith their co-accused criminally trespassed into the property alleged to be of the complainant and damaged the same, snatched the mobile phone, took away DVR etc. and threatened to kill the complainant and others. The investigation is at the initial stage and none of the accused have been arrested as yet, as they are evading the process of law. The stolen articles are yet to be recovered and also the names of the unidentified co-accused are to be revealed, for which the custodial interrogation of the petitioners is stated to be necessary.

Hon'ble The Supreme Court in “**Jai Parkash Singh vs. State of Bihar**” reported as (2012) 4 SCC 379 has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:- (i) The nature and gravity of the accusation; (ii) The antecedents of the applicant including the fact as to whether he 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; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.” 8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation. xxx xxx xxx

13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. xxx xxx xxx

21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated

in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

In the light of the judgment referred to above; the mode and manner in which the crime is alleged to have been committed, the gravity of offence and the facts as noticed above, for which the custodial interrogation of the petitioners is required, this Court is not inclined to grant the concession of anticipatory bail to the petitioners. Accordingly, both petitions stand dismissed being bereft of merit.

Photocopy of the order be placed on the file of the connected case.

07.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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