

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

CRM-M-54463-2022

Date of Decision:-25.01.2023

Sukhvir Singh @ Sukhbir Singh Sidhu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Parminder Singh, Advocate for the Petitioner.

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

Mr. Rohit Singla, 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. Initially the present FIR was registered against Gagandeep Singh @ Gagna and Surjit Singh @ Shivraj Singh. The petitioner and his co-accused Sandeep Singh were named as accused on the basis of the statement of Gurpiar Singh son of Gurdas Singh (father of the complainant) vide rapat no.26 dated 5.10.2022.

4. When this matter came up for hearing on 23.11.2022 the following order was passed:-

“ *Learned State counsel, assisted by learned counsel for the complainant, on instructions from ASI Amritpal Singh, submits that injury No. 1, which is a grievous injury resulting into fracture on the right leg of the victim, is attributed to the*

petitioner.

Faced with this, learned counsel for the petitioner seeks some time to address arguments.

List again on 30.11.2022.

The Investigating Officer is directed to supply copy a copy of the video recording to learned counsel for the petitioner, during the course of the day.”

5. The Counsel for the petitioner contends that the petitioner is not named in the FIR. No specific role or injury has been attributed to him. Specific injuries have been attributed only to Gagandeep Singh @ Gagna and Surjit Singh @ Shivraj Singh. Since the petitioner was ready and willing to join investigation, no case for custodial interrogation was made out and the petitioner ought to be granted the concession of anticipatory bail.

6. The Counsel for the State while referring to the reply dated 21.01.2023 on the other hand contends that in terms of the order dated 23.11.2022 the injury attributed to the petitioner is a grievous injury attracting Section 325 IPC. The photographs Annexure R-1 appended along with the reply filed by the State, extracted from the CCTV footage would clearly show that the petitioner was armed with a rod, Gagandeep Singh was armed with *gandasi* and Surjit Singh @ Shivraj Singh was also armed with *gandasi*. All of the accused including the petitioner brutally assaulted the complainant. In fact, the complainant had even refused to accept Rs.50,000/- as compensation from the co-accused Gagandeep Singh @ Gagna. Five to Six more persons were to be arrested and the motor cycle and weapons were to be recovered. Thus the custodial interrogation of the petitioner was certainly necessary.

7. The Counsel for the complainant vehemently opposed the bail application contending that the petitioner is one of the main accused having been attributed a grievous injury on the person of the complainant. The entire occurrence has been recorded on the CCTV Camera. Therefore, a prima facie case is clearly made out against the petitioner because of which he is not entitled to the grant of anticipatory bail.

8. I have heard learned Counsel for the parties.

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 against the petitioner are serious. He has been duly seen in the CCTV footage along with his co-accused all of them brutally assaulted the complainant. The injury attributed to him is a grievous injury with a rod. The recoveries of the motor cycle and weapon of offence are to be effected from the petitioner. Therefore, the custodial interrogation of the petitioner is certainly necessary to take the investigation to its logical conclusion. Even otherwise, a *prima facie* case is clearly established against the petitioner. 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. However, it is made clear that the observations made in this order are only for the purposes of deciding this bail application and Trial Court is free to proceed with the Trial independent of any observations made herein.

(JASJIT SINGH BEDI)
JUDGE

January 25, 2023

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>