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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4551-2024 (O & M)
Date of decision:11.03.2024

Mukramin Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anas Ahmed, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Dhruv Mittal, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.243 dated 03.05.2023 under Sections 148, 149, 323, 302 and 506 IPC registered at Police Station Sadar Nuh, District Nuh.

2. The present FIR came to be registered on the written complaint by Sakil and reads as under:-

“To the SHO, Police Post Akeri Chowki, P.S. Sadar Nuh, District Nuh. Application for taking legal action against 1. Fateh Mo. Alias Fattu 2. Jamsed sons of Isak 3. Sattar s/o Noor Mo. 4. Jaleb Khan alias Jallu 5. Sahun sons of Nassar 6. Sankul 7. Mubarik sons of Noor Mo. 8. Arsad 9. Aasind sons of Jaleb Khan alias Jallu 10. Najmuddin 11. Alim s/o Fateh Mo. alias Fattu 12. Wasim s/o Saddik 13. Mubarik s/o Kamruddin 14. Rabin s/o Hanif 18. Najia d/o Fateh Mo. Alias Fattu 10. Tahira w/o Jamsed and others, all residents of village Baraka, P.S. Sadar Nuh, District Nuh. Sir, it is requested that I, Sakil s/o Roshan am a resident of village Baraka, P.S. Sadar Nuh, District Nuh. On 02.05.2023, in the morning at about 8:00 O'clock,

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my father Roshan visited the fields, whereupon he saw that Fateh Mo. alias Fattu s/o Isak had cut the medh (ridge) of our field at 8:30 O'clock. At this, my father went to the house of Fateh Mo. alias Fattu and made a complaint about it. At this, Fateh Mo. alias Fattu etc. got enraged and they started hurling abuses at my father. My father Roshan came back at the field silently. I was cultivating the farm. In the meantime, Fateh Mo. alias Fattu connived with his family members and gathered them. They arrived at the field with lathi, danda, rod, farsa and gir, stone in their hands. As soon as he arrived, Fateh Mo. alias Fattu shouted challenging and saying 'kill him'. In the meantime, all the aforesaid persons attacked my father Roshan. when a noise of fight spread, Mukim, Jamaluddin, Najim and Haruni arrived there. Accused Fateh Mo. alias Fattu hit the head of my father Roshan with the saria (rod) which he was carrying in his hand Jamsed hit the head of my father Roshan with the lathi which he was carrying in his hand. Sattar hit the eyes of my father Roshan with the danda which he was carrying in his hand. Mubarik hit the right hand of Mukim with his lathi which he was carrying in his hand. Jaleb Khan alias Jallu hit the right thigh of Mukim with the saria (rod) which he was carrying in his hand. Mukarbin hit the right arm of Jamaluddin with the rod which he was carrying in his hand. Aashid hit near the area of Jamaluddin's ear with the lathi which he was carrying in his hand. Robin hit the back on the shoulder of Jamaluddin with the gid which he was carrying in his hand. Wasim hit the thigh of Jamaluddin with the farsa from its opposite side which he was carrying in his hand. Robin hit the right arm of Najim with the lathi which he was carrying in his hand. Mubarik hit the right arm of Najim with the rod which he was carrying in his hand. Alim hit the shoulder of Najim with the rod which he was carrying in his hand and Saikul hit Najim's shoulder with the lathi which he was carrying in his hand, Sahira and Najia hit Haruni's mouth and teeth with the gid which they were carrying in their hands. Najmuddin s/o Fatte Mo. alias Fattu hit my left arm with the danda which he was carrying in his hand. Saikul hit the left shoulder with the lathi which he was carrying in his hand. Sahun with the danda which he was carrying in his hand hit my hip on left side. Arsad with the stone which he was carrying in his hand hit my koch. Aforesaid accused persons Alim etc.

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beat us mercilessly. Hearing the noise of the fight, several people of the village arrived at the spot, who saved us from the accused persons. However, while leaving, the accused persons threatened saying, "today you escaped, but next time if there is an opportunity we would kill you." Accused(s) returned back to their house with their respective weapons. Thereafter, we made arrangement of private vehicle and came to Civil Hospital, Nuh, where our M.L.R was got registered. On seeing our serious condition, we were referred to Medical College, Nalhar. From there too, my father was referred to Delhi. At there, his treatment is undergoing. Thus, it is requested that the strictest legal action may be taken against the aforementioned persons. Further, our life and property may be protected. Dated 03.05.2023, complainant Sakeel s/o Roshan r/o village Muraka, P.S Sadar Nuh, District Nuh".

3. During the course of investigation, the statement of Jamaluddin was recorded under Section 161 Cr.P.C. wherein he also stated that the petitioner-Mukramin had given him an injury with a rod on his arm.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The injury attributed to the petitioner on the hand of the injured-Jamaluddin was a simple injury and no injury had been attributed to the petitioner on the person of the deceased. The co-accused Jaleb Khan @ Jallu and Mubarik had been granted the concession of regular bail by the Sessions Court vide orders dated 25.09.2023 and 10.10.2023 (Annexures P-2 and P-3 respectively). As the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. The learned counsel for the State, on the other hand, has filed a reply dated 22.02.2024 which is taken on record. While referring to the said reply, he contends that the petitioner was a part of the unlawful assembly

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which had committed the murder of Roshan and had caused injuries to various persons. The complainant had attributed a specific injury to the petitioner on the person of Jamaluddin. The statement of Jamaluddin was recorded under Section 161 Cr.P.C. wherein he has reiterated the version of the complainant. The MLR of Jamaluddin (Annexure R-4) would show multiple injuries on the person of Jamaluddin. Merely because the co-accused had been granted the concession of regular bail, the petitioner was not entitled to the concession of anticipatory bail, moreso, when the recovery of the rod had to be effected from him.

6. The learned counsel for the complainant also contends that it was a case of murder and the petitioner was a part of the unlawful assembly and therefore, was not entitled to the concession of anticipatory bail.

7. I have heard the learned counsel for the parties.

8. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', 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

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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.***

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9. In the instant case, not only is a specific role attributed to the petitioner in the FIR but the statement of Jamaluddin has also been recorded to the effect that the petitioner had caused injuries to him. A perusal of the medico legal report of the injured-Jamaluddin would reveal the detail of injuries suffered by him, which are as follows:-

Sr. No.	Injuries	Marked	Injury Number
1.	Two wounds of size around 0.5x0.5 cm present over LT Thigh at lateral aspect with skin deep in nature with black margins, 1cm aspect from each other with diffuse active bleeding. Adv-X-ray LT Thigh AP/LAT & Ortho opinion	No	1
2.	Reddish contusion of size 10x2 cm present over LT side of Back, below Scapula obliquely placed. Adv-CXR PA View	No	2
3.	Reddish contusion of size 2x1 cm present over LT Mastoid Region with swelling. Adv-NCCT Face & Ent Opinion	No	3
4.	Reddish contusion of size 4x2 CM present over LT Shoulder Adv-X-ray LT Shoulder AP/LAT & Ortho opinion	No	4

10. Quite apparently, the medical evidence is in consonance with the ocular account and therefore, the offence is *prima facie* established. The recovery of the weapon of offence is also to be affected from the petitioner. Even otherwise, he is a part of the unlawful assembly which has committed the offence of murder and multiple injuries have been caused to various other injured. Merely because the co-accused have been granted the concession of regular bail does not entitle the petitioner to the grant of anticipatory bail as the consideration for the grant of anticipatory and regular bail are completely different.

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11. In view of the above, I find no merit in the present petition.
Therefore, the same stands dismissed.

12. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application 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.

(JASJIT SINGH BEDI)
JUDGE

March 11, 2024
sukhpreet

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