

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8565-2024
DECIDED ON: 21.02.2024

MOHAMMAD AFROZ ALIAS MD. AFAROJ
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satvir Singh, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No.111, dated 02.10.2023, under Sections 458, 323, 506, 148 and 149 of IPC (Sections 307 and 302 of IPC added later on), registered at Police Station City-2, District Malerkotla.
2. The contents of FIR read as under:-

“Copy of Statement, Statement of Shehnaz wife of Shoukat Ali alias Shouki Resident of Nawaz Colony Malerkotla aged 40 years Phone No. 79865-72314. Stated that I am a resident of the said address and do domestic work. On 1-10-2023 Mohammad Aasif, Aqib, Abbu Bakar son of Kais residents of Nawaz Colony Malerkotla, Nadeem son of Mohammad Aslam resident of 786 Chowk Malerkotla and 2 other unknown persons, since the day were flying kites at the roof of the house while playing deck and at around 7-00 PM at night the abovesaid persons came at the roof of our house and started shouting and abusing loudly, therefore I and my husband Shoukat Ali alias Shouki went to the roof to make them understand, then Mohammad Aasif held a sword in his hand and hit my husband Shoukat Ali alias Shouki

on the head. When I came forward to rescue, Akib hit me on the head with a Daang (Stick) in his hand and I fell on one side. Then the men threw down my husband Shoukat and beat him with a Daang (sticks) and dragged him by holding from the legs and arms and threw him on the net on the roof of Maulvi Sadam and due to the net being broken, my Husband Shoukat Ali alias Shouki fell from the roof to the floor due to which Shoukat Ali alias Shouki suffered many injuries. When I raised the cries of Maarta Maarta, then the abovesaid persons ran away while giving threatenings to kill. Those who used to say loudly that today you have survived, next time you will be taught a good lesson. Reason for resentment is that Mohammad Aasif, Aqib, Abbu Bakar, Nadeem and 2 unknown persons come to our house and make noise and disturb us. When we stopped them from doing so, they beat us. Due to the situation of me and my husband getting worse, my brother in law (Jeth) Mohammad Liaqat, son of Ghulam Rasool, after making arrangements got us admitted to Civil Hospital Malerkotla. Where I and my husband Shoulat Ali alias Shouki were referred to Rajindra Hospital Patiala after giving first aid. We are undergoing treatment in Rajindra Hospital Patiala and wrote a statement to you during the treatment. Legal action should be taken against the abovesaid persons. The statement has been read and correct. Sd/- Shehnaz, Verified statement Sd/- Mohammad Liaqat son of Ghulam Rasool Resident of Garib Nagari Idgah Road Malerkotla 90417-80158 Verification Sd/-Gurdeep Singh ASI Police Station City 2 Malerkotla dated 2-10-2023.”

3. Learned counsel for the petitioner has vehemently argued that the petitioner was not named in the FIR. It is submitted that the alleged occurrence took place on 01.10.2023 regarding which an FIR has been lodged on the statement of complainant on 02.10.2023 under Sections 458, 323, 506, 148 and 149 against only four persons namely Mohammad Aasif, Aqib, Abbu Bakar, Nadeem and two

unknown persons. It is only on the basis of supplementary statement of the complainant, Section 307 of IPC was added and once the husband of the complainant died on 04.10.2023, Section 302 of IPC was added there on. The case set up by the petitioner seeking anticipatory bail is with the assertion that he was not present at the spot rather was at his work place, which can be proved from the statements of Afsana Khatun (mother of the petitioner), Mohammad Imran (co-worker of the petitioner) and Mohammad Dilshad (co-worker of the petitioner), which stands recorded by the police during investigation in the application dated 12.10.2023 (Annexure P-2), which was submitted by the mother of co-accused namely Parveen Akhtar.

4. Referring to the statements made by mother of the petitioner as well as co-workers of the petitioner, learned counsel for the petitioner submits that the present petitioner was at his work and after the incident various people gathered in the neighbourhood and on hearing the noise petitioner had also come, where all the persons picked up Shoukat Ali and sent him to the hospital for treatment. It is categorically pointed out that the petitioner was not at the spot when the alleged occurrence took place and he came back from his work place only in the night and that time alleged occurrence has already taken place.

5. Notice of motion.

6. On the asking of Court, Mr. Rajiv Verma, DAG Punjab, accepts notice on behalf of respondent-State, who is duly assisted by Shri Gurnoor Sandhu, Advocate for the complainant have produced a clip of video recording obtained from the nearby CCTV, which has been examined by this Court as well reflecting the presence of the petitioner, which is not a simpliciter presence, but he has come down after committing the offence alongwith other accused persons and

thereafter ran into the adjoining seat, therefore, the argument qua the presence of the petitioner at the spot is not tenable.

7. As far as specific role attributed to the petitioner is concerned, since he was among the 4 to 7 persons in the group they all seems to be equally responsible as the deceased after inflicting injuries on his person was thrown down from the roof of a double story house, where he used to live. It is also apparent on perusal of the video clip produced before this Court that all these accused persons including the present petitioner have entered into the house of deceased and the complainant and purposely gave injuries with intent to kill, hence no case is made out for grant of anticipatory bail, therefore, the present petition stands dismissed being devoid of merits with no order as to costs.

21.02.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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