

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

CRM-M-17506-2024

Date of Decision:-19.04.2024

Rohit Kumar @ Prema.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Sumit Dua, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General,
Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.10 dated 26.01.2024 under Sections 307, 323, 324, 506, 148, 149 IPC (Section 326 IPC added later on) registered at Police Station Division No.7, Jalandhar.

2. The present FIR came to be registered at the instance of Robit Atwal which reads as under:-

“ Statement of Robin Atwal S/o Vijay Kumar R/o house no.4, Phagwari Mohalla Gara Jalandhar Age 28 years, Mobile 85590-75528 has stated that I am resident of the said address and I work as a tent worker. On 25.01.2024 at 7:30 PM I came to inquire about my brother's daughter in front of Vikram Hospital Gara SGL Hospital where I went to get a box of sweets from the hospital at Gara Dayanand Chowk on my Activa. Where My friend Bharat called me and told me to take me to the hospital. On which I took my activa and I along with my younger brother Rishabh to Dayanand Chowk. When I was going from Dayanand Chowk to Tara chand Colony road Gara on my Activa with my younger brother Rishabh and when I

reached near the shop of Puppy scrap dealer, where the first motorcycle riding was Rohit Kumar alias Prema resident of Gara holding Gandasa, Dilkhush resident of Garha holding Kirpan, Sachin resident of Raj Nagar Jalandhar carrying Datar, Maninder resident of Garha, Jail Chowk Jalandhar and Bagga S/O Tannu resident of Mohalla No. 30 Jalandhar Cantt who were standing with them on their bullet motorcycle along with many unknown youths. Rohit kumar@ Prema hit me with a Gandase in his hand which hit me on my right kneecap and second time Dilkhush resident Garha hit me on my head with his hand kirpan. Which hit my forehead on the front side of my head and Sachin resident of Rajnagar Jalandhar hit my head with sickle hold in his hand which hit on my head. Maninder resident of jail chowk Jalandhar slapped me. Bagga S/o Tannu resident of Jalandhar cant. tried to force me to sit on the bullet motorcycle and I screamed that they have killed me. After that Shetty and Vaisakhi of garha came forward to save me and all of them ran away from the spot on their motorbikes with their weapons after injured me. My family members arranged a ride and took me to civil hospital. Where doctor prepared my MLR. The grudge is that there are cases of fights/quarrel between me and my family members and who has attacked on me with intention to kill me. Legal action should be taken against all of them.”

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The occurrence allegedly took place on 05.01.2024 whereas the FIR came to be registered on 26.01.2024. The information regarding the nature of the injury was obtained much later. Even otherwise, the injury attributed to the petitioner was on a non vital of the body i.e. the knee. As he was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

4. The Counsel for the State on the other hand has filed short reply dated 19.04.2024 by way of affidavit of Mr. Harjinder Singh, PPS, Assistant Commissioner of Police, Model Town, Jalandhar in the court today, which is taken on record. While referring the said reply, he contends that the petitioner is the man accused having caused the grievous injury i.e. a fracture of the right knee joint on the person of the complainant. Therefore,

the nature of the allegations levelled against the petitioner did not entitle him to the concession of bail, moreso when he was a habitual offender with multiple cases pending against him.

5. I have heard learned Counsel for the parties.

6. The relevant extract of the reply of the State dated 19.04.2024 is reproduced hereinbelow:-

“ 6. That injury no.1 was declared sharp in nature, injury no.2 was declared light sharp and injury no.3,4,and 5 were declared blunt in nature and out of said injuries injury no.1 was kept for Ortho opinion, injury no.2 was kept for X-ray Right forearm, Injury no.5 for Advice X-Ray-Skull.

7. That after X-ray of skull, opinion was given by Dr. Mohinder Partap Singh Radiologist vide no. MPS/58/CHJ/2024 and it was opined that "The NCCT Head shows grossly normal study for the concerned injury. Hence the concerned injury is declared simple in nature."

8. That upon "x-ray of right knee joint AP/Lat shows the fracture of patella bone of right knee joint is seen for the concerned injury. Hence the concerned injury is declared as grievous in nature". That as injury no.1 was declared grievous hence offence u/s 326 IPC was added in present FIR vide DDR No.18 dated 29-02-2024.

9. That upon x-ray of right forearm AP/Lat shows no bony injury seen for the concerned injury. Hence the concerned injury is declared simple in nature.

10. That petitioner has inflicted injury no.1 on right knee of complainant and said injury was declared grievous in nature as such petitioner does not deserve any leniency from this Hon'ble Court thus present petition is liable to be dismissed.

13. That petitioner is having criminal antecedents and following other FIRs are registered against petitioner: -

1. FIR NO. 35 DT 28.02.2018 U/S 323, 324, 148, 149 IPC PS. DIV NO. 07 JAL

2. FIR NO. 36 DT 19.03.2019 U/S 323, 354-A, 148, 149 IPC PS DIV NO. 07 JAL

3. FIR NO. 237 DT 10.09.2020 U/S 323, 324, 452, 148, 149 IPC

PS. DIV NO. 07 JAL

4. FIR NO. 68 DT 12.05.2023 U/S 452, 427, 323, 160, 148, 149

IPC PS DIV NO. 07 JAL

5. FIR NO. 06 DT 17.01.2024 U/S 323, 324, 506, 148, 149 IPC

PS.DIV NO. 07 JAL

6. FIR NO. 44 DT 01.04.2021 U/S 307, 323, 324, 148, 149 IPC

PS DIV NO. 07 JAL.

7. 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. Apparently, the injury attributed to the petitioner has caused a fracture of the patella a bone of the right knee joint which injury has been declared to be grievous in nature and punishable under Section 326 IPC. Further the petitioner is a habitual offender with as many as 06 cases of similar nature pending against him. Even otherwise the offence stands *prima facie* established. Therefore, in order to take the investigation to the logical conclusion the custodial interrogation of the petitioner is certainly required.

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

9. However, the observations made hereinabove 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.

(JASJIT SINGH BEDI)
JUDGE

April 19, 2024
Vinay

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