

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

2024:PHHC:028036

CRM-M-19801-2022

Date of decision: February 26th, 2024

Anish Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Bains, Senior Advocate
with Mr. M.S. Chauhan, Advocate
for the petitioner.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

Mr. Padamkant Dwivedi and Mr. Vishal Garg, Advocates
for the complainant.

MANJARI NEHRU KAUL, J.

Petitioner is seeking the concession of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in case FIR No.2 dated 01.01.2018 registered under Sections 307, 452, 324, 323, 148, 149 of the IPC (Sections 325, 326 of the IPC added subsequently and Section 120-B IPC added vide GD No.22 dated 02.04.2022) at Police Station Guru Har Sahai, Ferozepur.

2. Learned senior counsel for the petitioner submits that in compliance of order dated 14.11.2022 passed by a coordinate Bench, the petitioner had joined investigation and cooperated with the investigating agency, hence, the said order be made absolute.

3. Learned senior counsel has reiterated that the petitioner is a victim of false implication inasmuch as it is after 4 years and 4 months from the date of the registration of the FIR in question i.e. 01.01.2018, he was now being sought to be arrested for allegedly being a

conspirator in the crime in question. It has been further argued by

learned senior counsel that neither was the petitioner named in the FIR in question nor any suspicion raised therein qua his involvement in the crime in question nor any role attributed to him when the challan was presented thereafter; the petitioner had been nominated in the instant case only on the basis of a disclosure statement allegedly suffered by co-accused, who stated that he was the mastermind behind the brutal assault upon complainant. Learned senior counsel has vehemently contended that the disclosure statement on the basis of which the petitioner has now been arraigned as an accused has very weak evidentiary value in the eyes of law.

4. It has still further been submitted by the learned senior counsel that the FIR in question, which had been lodged after an abnormal delay of six days from the date of the alleged occurrence, was against some unknown assailants; the complainant was dissatisfied with the investigation carried out, for which he approached this Court vide CWP No.2704 of 2018; this Court then issued directions for the constitution of an SIT to inquire into the occurrence in question. While drawing the attention of this Court to Annexure P-1/T filed by the complainant, it has been further submitted that even therein, neither was the petitioner named as an accused nor was he arraigned as a respondent, which further made it evident that the petitioner had been implicated in the instant case as an afterthought. Learned senior counsel has still further submitted that the mode and manner in which the alleged occurrence took place left no manner of doubt that the complainant had ample opportunity to specifically name all the accused, who allegedly participated in the crime in question, while appearing before the SIT, so constituted pursuant to the orders of this

Court. However, it was a matter of record that even before the SIT, the complainant had named only Gurwinder Singh alias Surender and Gaura alias Chana as suspects, both of whom had admittedly been declared innocent subsequently. It has furthermore been contended by the learned senior counsel that the petitioner had been roped in on the basis of the alleged disclosure statement of co-accused Jasmail Singh alias Popal and the motive attributed to the petitioner to conspire in the crime in question was that he had been nursing a grudge against the complainant on account of some previous occurrence, which had taken place and thus, it was at his behest, all the accused had carried out the assault on the complainant and inflicted multiple injuries with lethal weapons, which they were armed with at the relevant time. However, learned senior counsel has argued that the motive attributed to the petitioner for masterminding the crime in question stood belied from the fact that though the petitioner had been once attacked way back in the year 2015, however, he had not even named the complainant as an accused in that occurrence, which further stood substantiated from GD No.40 dated 12.02.2015 recorded by the petitioner in the said regard. In support, learned senior counsel has drawn the attention of this Court to Annexure P-3/T. Hence, it has been asserted that there was no question of the petitioner nursing any grudge against the complainant.

5. Learned senior counsel has still further vehemently contended that the investigating agency had miserably failed to establish any connection between petitioner and the other co-accused, who had carried out the alleged assault on the complainant. While drawing the attention of this Court to the reply dated 20.05.2023 filed by the State, it has been submitted that it had been stated therein that

mobile No.9592757089, on which number co-accused Jasmail Singh alias Popal had made calls, was registered in the name of the wife of the petitioner, however, on the other hand, in the challan presented, the same phone number was stated to be registered in the name of co-accused Kamal Narain. It was thus urged that it was evident that in fact there was no cogent material on record to connect the petitioner with the crime in question. Learned senior counsel has lastly brought to the notice of this Court that the interim order dated 14.11.2022 had been challenged by the complainant before Hon'ble the Supreme Court vide Special Leave Petition (Criminal) Diary No.39276/2022. The Hon'ble Supreme Court had, however, dismissed the same vide order dated 09.01.2023. Learned senior counsel has thus urged that in the aforementioned facts and circumstances, since the petitioner had joined investigation and cooperated with the investigating agency, coupled with the fact that no recovery was to be effected from the petitioner as there could be no apprehension of the petitioner tampering with the evidence since the investigation already stood concluded qua the other accused, the interim order be made absolute.

6. Learned State counsel assisted by learned counsel for the complainant has vehemently opposed the prayer and submissions made by the learned senior counsel for the petitioner for making the order dated 14.11.2022 absolute. It has been vehemently asserted by the learned State counsel that the petitioner was not only a key player in the crime in question but had masterminded the entire occurrence; the entire conspiracy had been hatched at a birthday party organized by the petitioner. It has been further submitted that the role and active

participation of the petitioner had come to the fore in the disclosure statement made by all the four co-accused, who categorically stated that it was at his behest that the brutal attack had been carried out on the complainant; the complainant sustained 17 injuries on his person for which he had to undergo as many as nine surgeries. It has still further been submitted by the learned State counsel that as per the 'Call Record Details' collected by the investigating agency during investigation, on the date of the occurrence in question, the petitioner was in continuous and constant contact with co-accused Kamal Narain, who in turn was in constant contact with co-accused Jasmail Singh alias Popal, who inflicted the injuries on the person of the complainant. Learned State counsel has submitted that Kamal Narain was none other than the domestic servant of the petitioner. Learned counsel has also brought to the notice of the Court that the motorcycle on which the assailants had come to the place of occurrence and which had also been used by them for doing a recce of the place of occurrence, had been recovered from the house of the petitioner. Thus, it has been asserted that there could be no manner of doubt about the active participation of the petitioner in the crime in question; the mode and manner in which the crime was given effect to, his custodial interrogation was thus required by the investigating agency.

7. Learned counsel for the complainant has also submitted that since a shoddy investigation had been conducted by the investigating agency, as it was also a matter of record that certain relevant documents including statements under Section 161 of the Cr.P.C. had gone missing mysteriously from the police files, the complainant had to seek the intervention of this Court by way of

CWP No.2704 of 2018 and it was only thereafter when the SIT was constituted and investigation carried out, the role of the petitioner in the crime in question came to light. Learned counsel has submitted that the petitioner was an influential person and it was on account of his unholy nexus with some local police officials, even though he had been specifically named by the complainant soon after the occurrence in question while he was in hospital on 30.12.2017, his name had been conspicuously deleted from the FIR registered by the police on 01.01.2018. Learned counsel for the complainant has asserted that in the light of the grave and serious allegations levelled against the petitioner and the nature of injuries sustained by the complainant, he did not deserve to be extended the concession of anticipatory bail, more so when there was a possibility of the petitioner intimidating and influencing certain material witnesses.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. *Prima facie*, the allegations levelled against the petitioner do come across as being very serious and also a matter of grave concern. It was only after the SIT was constituted that the investigation was carried out and that probably is the reason why after a delay of 4 years and 4 months, the role of the petitioner came to the fore. Allegedly, the petitioner orchestrated a vicious and brutal attack on the complainant. The complainant, soon after the occurrence in question, was removed to the hospital in a serious condition with multiple fractures and had to undergo multiple surgeries. Allegedly, not only was the petitioner in constant touch with the co-accused through his phone but even the vehicle used in the crime in question was recovered

from the house of none other than the petitioner. Delay of six days in the lodging of the FIR in question would not, in any manner, enure to the benefit of the petitioner, in the facts and circumstances of this case, as it is not disputed that the soon after the occurrence in question, the complainant was removed to the hospital in a critical condition.

10. In the facts and circumstances as enumerated hereinabove, this Court is not inclined to extend the extraordinary concession of anticipatory bail to the petitioner.

11. The instant petition stands dismissed.

12. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

February 26th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No