

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21062-2024
Reserved on: 05.08.2024
Pronounced on: 30.08.2024

Sanjay Gupta and another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashit Malik, Advocate
for the petitioners.

Mr. Rajat Gautam, Addl. A.G., Haryana.

Ms. Kashish Sahni, Advocate and
Mr. Harshit Jangra, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
536	28.10.2023	City Bhiwani, District Bhiwani	323, 325, 302, 506, 34 IPC

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 438 CrPC, 1973, seeking anticipatory bail.

2. Vide order dated 15.05.2024, a Co-ordinate Bench of this Court had granted interim anticipatory bail to petitioner No.2 and had made the same absolute on 28.05.2024 qua him. Now the petition is surviving qua petitioner No.1 only and on 28.05.2024, petitioner No.1 was also granted interim anticipatory bail.

3. Counsel for the petitioner No.1 submits that the incident in question was an offshoot of a trivial dispute between two neighbours and the intent was never to cause any fatal injury to anyone. He further submits that present was a case of version and cross-version as both the sides inflicted injuries on each other. Counsel for the petitioners also points out that one of the injured-Om Parkash died after a gap of almost 5 months from the date of incident and the petitioners were initially granted police bail having joined investigation, thus, their further custodial interrogation is not required at this stage.

4. Counsel for the petitioner No.1 further submits that apparently the fatal injury was on the head of the deceased, whereas, neither the complainant-Harsh nor even the

deceased himself in their respective statements dated 27.10.2023 and 30.10.2023 ever made any averment that any brick blows were inflicted upon the head of the deceased by petitioner No.1. He further points out that no doubt, it was there in the FIR that brick blows were inflicted upon person of the deceased, however, he himself in his statement recorded on 30.10.2023 nowhere mentioned about any brick blows given on his head and rather he only said that the repeated brick blows were inflicted by petitioner No.1 on his chest.

5. The State opposes bail.

6. State counsel submits that petitioner No.1 gave the fatal brick blow to the deceased on his head. It has been further submitted that even as per the statement of complainant injured- Harsh as well as the statement of deceased-Om Prakash, the petitioner No.1 gave brick blows to the deceased and both the petitioners were clearly visible in the CCTV footage at the time of incident. State counsel also submitted that motive was clearly attributable to petitioner No.1, he having sold his shop to the present complainant and a civil suit was going on between the parties.

7. State counsel also pointed out that the medical opinion qua the head injury of the deceased is still awaited, and at this stage, it may not be appropriate to grant concession of anticipatory bail in favour of petitioner No.1, there being fracture over the skull of the diseased. It has also been submitted that injuries inflicted upon the complainants are grievous in nature even as per the MLR and in view of the given facts and circumstances and also while considering the nature of offence involved, the petitioners do not deserve the concession of anticipatory bail.

8. It would be appropriate to refer to para no.7 of the reply which reads as under:-

"7. That during investigation, the superintendent of police Bhiwani, constituted an SIT headed by the deponent vide letter dated 28.10.2023.

That during investigation, opinion of the Medical Board, which conducted the Post Mortem of deceased was obtained on 07.07.2024 and the opinion given by the Board is as under:

"After perusal of the above mentioned documents the under signed board of doctors is of the considered opinion that cause of death in this case is coronary artery deceased and its complications over the already weakened body as described in the post mortem examination report" The copy of the same is annexed herewith as Annexure R-3. Accordingly section 302 IPC is deleted. The matter is still under investigation."

9. The petitioners were granted interim protection, and during the interregnum, there is no allegation that they had intimidated the witnesses, hampered the investigation, or, despite being called to join the investigation, did not appear before the investigator. Given the police report, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioners complying with the terms of the bail order and the following additional conditions.

10. Given the background of allegations against the petitioners, it becomes paramount to protect the complainant, witnesses, and members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioners shall be entitled to renew and take it back in case of acquittal, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

11. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall not enter the victim's family's property, workplace, and residence until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (Crl.) 458; and *Aparna Bhat v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

12. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

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13. **Petition allowed** in terms mentioned above. Interim order dated 15.05.2024 is made absolute. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.