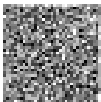


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2024:PHHC:120334



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28011-2024
DECIDED ON: 11.06.2024

MANDEEP LAMBA @ MANDY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akbarjit Singh, Advocate
for the petitioner (through VC).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.137, dated 12.11.2023, under Sections 323, 307, 148, 149 IPC and Section 25, 27 of Arms Act, 1959, registered at Police Station Jodhewal (Basti Jodhewal), Ludhiana, Police Commissionerate Ludhiana.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“It is prayed that I am resident of the above mentioned address and I am working as a cleaning staff in Municipal Corporation Ludhiana we are 2 brothers and My younger brother's name is Mani and tomorrow on 11th November 2013 at about 9 PMI along with my

brother money my cousin brother Akash and Deepak went to buy clothes from Rahon Road Ludhiana My uncle son Sumit was working at the said clothes shop when we started to look for the clothes in the shop then while choosing many clothes got Scattered Hence another boy namely Mandy who was also working at the said shop told my cousin Sumit that we had all created a mess of the clothes upon which my cousin Sumit replied that we are all family members therefore Mandy abused my cousin in the name of his mother. Due to this started between us and Mandy upon seeing this the owner of the shop sent us out from the shop and made Mandy sit inside the shop the things escalated and upon seeing the ruckus local councilor Laddi came to the spot He mediated this incident and sent all us back home and told that we will settle everything tomorrow by holding a meeting all of us came back to our home thereafter at about 10:00 PM Ashwini, Lucky Son of Billa resident of Indira colony Raho Road Ludhiana along with Mandy Lucky and 10 / 15 unknown persons came in our Street and started to abuse in our front of our house in high volume, when I came out I saw them armed with kirpans, glass bottles, Dangs and sotas, the said assailants started to throw the said bricks and glass bottles at us. Mehndi raised Alakara and said that hit them with a bullet they should not go back, thereafter one boy aged about 25/27 years of mulla fashion came forward and shot my father with a bullet on his left part of the chest due to the said gun shot my father fell on the ground and rest of the bullets could not hit him, as I can identify him upon seeing. Thereafter we raised rola and the accused ran away from the spot alongwith their weapons. I alongwith my brother arranged for a vehicle and got my father admitted in CMC hospital. My father is under treatment at CMC.

Legal action be taken against the accused. I am giving this statement in the presence of my cousin brother Aakash, the same is read over and admitted correct. SD/- Vipin Ghai signed by Aakash Attested by: ASI Balkar Singh 2742/Ldh. PS Basti Jodhewal, Ludhiana Dated. 12.11.2023.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that he has been falsely implicated in the present case wherein no injury has been attributed to the petitioner and indeed, his presence is yet to be established. Further, there is inordinate delay in filing the FIR which also indicates that the police is hand in glove with the complainant.

On behalf of the State

Learned State Counsel appearing on advance notice, opposes the prayer for grant of anticipatory bail at the very outset by urging that this being second anticipatory bail application is liable to be dismissed on account of non maintainability.

4. **Analysis**

Be that as it may, without going into the merits, a mere reference is sufficient enough to record that actually the case was heard at length during the course of hearing of first anticipatory bail petition(Annexure P-3) and there is no such change of factual aspects or any other new ground raised by the counsel for the petitioner today before this Court. Accordingly, the second or subsequent bail application under Section 438 Cr.P.C., can be filed, if there is a change in the fact-situation or in law, which requires the earlier view being interfered with or where the earlier

finding has become obsolete and the same has been reiterated by the Apex Court in “*Rani Dudeja vs State Of Haryana 2017 (13) SCC 555*” wherein it has been held that once the first anticipatory bail stands withdrawn without going into the merits of the case, the second application for anticipatory bail is non maintainable until and unless there is change in the circumstances.

5. Decision

This Court is, therefore, of the considered view after having examined the submissions made by the counsel for the petitioner and the ambit of Section 438 Cr.P.C., this petition fails.

Hence, holding that second anticipatory bail in such circumstances is not maintainable, the petition is ordered to be dismissed.

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

11.06.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No