

2024:PHHC:110157



CRM-M-33561-2024 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(209)

CRM-M-33561-2024 (O & M)
Date of decision: 27.08.2024

Yogender Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Neeraj Yadav, Advocate,
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Prashant Singh Chauhan, Advocate,
for the complainant.

JASJIT SINGH BEDI, J. (Oral)

CRM-33790-2024

The application for placing on record the FIR No.267 dated 15.08.2024 (Annexure C-1), is allowed as prayed for subject to all just exceptions. The same is taken on record.

CRM-M-33561-2024

The prayer in this third petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case bearing FIR No.57 dated 15.03.2024 under Sections 147, 148, 285 and 506 IPC and Section 25 of the Arms Act, 1959 (later on Section 307 IPC was also added) registered at Police Station Bawal, District Rewari.



CRM-M-33561-2024 (O & M)

::2::

2. The present FIR came to be registered at the instance of Karambir and reads as under:-

To, SHO, Police Station Bawal. Subject: Complaint for taking legal action against 1. Yogesh 2. Yogendra son of Mitrasen alias Gullu 3. Rajesh son of Sukhiram resident of Gurjar Majri 4. Ankit Bhanja of Rajesh resident of Kota and 3-4 other accused, regarding firing and threat of death and murderous attack. Sir, the applicant makes the following submissions: 1. That the applicants are three brothers, whose names are Mahendra, Karmaveer and Surendra. Surendra and Mahendra live on a tube well, the applicant lives in the village with his family. 2. That on the night of 14.03.2024, at around 10:00 PM, Yogesh, Nur og Yogendra, Rajesh, Ankit and 3-4 other accused came at the house of applicant with lathies and illegal weapons. They came out of the applicant's house with weapons and started breaking the door of the applicant's house with sticks, hearing the sound of which the applicant came out of the courtyard to the terrace and saw that the above accused shouted loudly and threatened that today they will kill me and my family and threatened to withdraw the case filed against them by the applicant's brother Mahendra and the culprits attacked with sticks due to which the gate of the applicant's house was badly damaged and meanwhile, Yogesh fired at the applicant with a pistol but the applicant narrowly escaped the attack. The culprits kept threatening to kill repeatedly. Meanwhile, the applicant's wife Sarita and son Sonu also came out of the room and neighbour Jeetram was also watching this incident standing on the terrace of his house The culprits have planned the above mentioned fatal attack on the applicant. At 10.00 PM, the applicant called PCR 112 from mobile number



CRM-M-33561-2024 (O & M)

::3::

9518241990 regarding the above incident, on which the police came there and the applicant told them about the above incident and also took photographs etc. The culprits are continuously threatening that they will kill the applicant and his family as soon as they come out of the house. 3. The reason is rivalry that the applicant's brother Surendra has filed FIR No. 357 dated 20.10.2023 against the culprits at police station Bawal, in which Yogesh and others are on bail Therefore, it is requested to Sir that security should be provided to the applicant and his family and strict legal action should be taken against the culprits very soon. Sir, it will be very kind. Date 15.03.2024 SD/-Karambir.

3. The learned counsel for the petitioner contends that the present FIR has been got registered on account of a previous enmity between the parties as both belong to the same village. An FIR No.62 dated 19.03.2024 under Sections 323, 452, 506/34 IPC, Police Station Bawal, District Rewari had been got registered against the present complainant-party at the instance of one Karishma, a family member of the petitioner. The present case was one of no injury at all. The allegations were vague and general in nature. A co-accused/Rajesh had been granted the concession of anticipatory bail after the addition of Section 307 IPC. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State, on the other hand, has filed an additional status report dated 19.08.2024 which is taken on record. While referring to the said report, he contends that the petitioner and his family members were habitual offender. Initially, the FIR No.357 dated 28.10.2023

**CRM-M-33561-2024 (O & M)**

::4::

registered at the instance of Surender, brother of the present complainant-Karambir for the injuries suffered by one Mahender. Yogesh and Yogender (petitioner) alongwith Gopal, Rajesh and Mitersen were accused in the said case. Thereafter, the instant FIR came to be registered against the petitioner-Yogender, Yogesh, Rajesh and Ankit. During the pendency of the instant bail application, FIR No.267 dated 15.08.2024 under Sections 109(1), 126, 190, 191(3) of BNSS, 2023 and Section 25 of the Arms Act, 1959, Police Station Bawal, District Rewari came to be registered at the instance of Surender against Yogesh, Yogender (petitioner), Mitarsen, Rajesh and Akash. Therefore, it was apparent that the petitioner was a notorious person who committed yet another offence during the pendency of the instant bail application. Therefore, the nature of the allegations and the conduct of the petitioner did not entitle him to the concession of anticipatory bail.

5. The learned counsel for the complainant has vehemently opposed the bail application contending that the petitioner-Yogender and his brother-Yogesh were hardened criminals. This was the third FIR registered at the instance of the present complainant party against the petitioner, his brother-Yogesh and others. The brazenness with which the occurrence leading to the registration of the FIR No.267 dated 15.08.2024 (Annexure C-1) was committed during the pendency of the instant bail application showed that the petitioner had no regard for the law. Therefore, even though, it was the case of no injury the petitioner was not entitled to the concession of anticipatory bail.

6. I have heard the learned counsel for the parties.



CRM-M-33561-2024 (O & M)

::5::

7. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', 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***



::6::

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.”

8. The examination of the facts and circumstances of the case would show that, initially, FIR No.357 dated 28.10.2023 under Sections 148, 149, 323, 506 and 34 IPC, Police Station Bawal came to be registered against the petitioner, his brother-Yogesh and others. Thereafter, the instant FIR i.e. FIR No.57 dated 15.03.2024 under Sections 147, 148, 285 and 506 IPC and Section 25 of the Arms Act, 1959 (later on Section 307 IPC was also added), Police Station Bawal, District Rewari, came to be registered against the petitioner, his brother-Yogesh and others. During the pendency of the present bail application, yet another FIR No.267 dated 15.08.2024 under Sections 109(1), 126, 190, 191(3) of BNSS, 2023 and Section 25 of the Arms Act, 1959, Police Station Bawal, District Rewari was registered against the petitioner, his brother-Yogesh and others. It is apparent that the petitioner is a hardened criminal and has scant regard for the law. Despite



CRM-M-33561-2024 (O & M)

::7::

the pendency of the instant petition, he has gone on to commit yet another offence. Therefore, keeping in view the conduct of the petitioner, the offence being *prima facie* made out and the investigation having to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

9. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

10. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application 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

August 27, 2024
sukhpreet

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