

2024:PHHC:114145



210.

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

CRM-M-35485-2024 (O&M)

Date of decision: 02.09.2024

ASI Sandeep Singh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate and
Mr. Keshav Partap Singh, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
with DSP Deepak Sandhu, Inspector Anup Singh,
SI Rajesh Kumar.

Mr. Sukhbir Singh Goyat, Advocate, for the complainant.

GURBIR SINGH, J.

CRM-29583-2024

Application seeking exemption from filing certified/typed
copies of Annexures P-1 to P-8, is allowed, as prayed for.

CRM-M-35485-2024

1. This petition has been filed under Section 482 of Bharatiya
Nagrik Suraksha Sanhita, 2023 for grant of anticipatory bail to the
petitioner in case FIR No.53, dated 04.03.2024, under Sections 147, 148,

149, 302, 341, 120-B, 212 of IPC, 1860 (Section 212 of IPC added lateron) and Section 25(1)(a) of Arms Act, 1959, registered at Police Station Hansi Sadar, District Hisar.

2. The FIR, in question, was registered on the statement of Balwant Singh son of Juglal, which reads as under:-

"Statement of Balwant Singh son of Juglal, resident of Kanwari, Tehsil Hansi, District Hisar, aged 48 years, Mob. No.9466051760. Stated that I am resident of the aforesaid address and doing agricultural work. We are three brothers and all are married. I am eldest of all, Nar Singh alias Sanjay, who is present Sarpanch of village is younger than me and Charan Singh is youngest of all. On dated 3.3.2024, there was marriage in our village of Vikram, nephew of Banwari son of Kundan, in which my brother Nar Singh alias Sanjay had gone to attend the marriage. In the evening at about 08/8.15 PM, when my brother Nar Singh alias Sanjay, after attending the marriage function when he was returning towards his house in his car No.HR51BZ-3313 Marka Creta of white colour, at that time I and Dharampal son of Ram Kumar both were sitting on the Chabutra in front of house of Dharampal. When my brother Nar Singh alias Sanjay alongwith his car reached in front of the house of Karan son of Mahabir, at the same time, 3/4 unknown boys having pistols in their hands were sitting there while concealing themselves. As soon as Nar Singh's car reached there, those young boys on the signal given by Karan son of Mahabir, came out in front of the car to kill my brother Nar Singh alias Sanjay. My brother stopped the car, then they fired on my brother. The bullets hit the stomach and shoulder of my brother Nar Singh. My brother Nar Singh alias Sanjay on account of having suffered bullet shots had fallen down in the car while oozing with blood after he became unconscious. On hearing noise of gun shots we ran towards the car, the aforesaid young boys while firing and raising loud cries that Karan brother we have completed your work and if any one bothers you in future we would treat him also in the same manner. At the same time when I was going towards the spot, near me Suresh son of Giani Ram, Shamsher son of Rishal Singh, Kulbir son of Bhim Singh, Kuldeep and Sandeep sons Dhoop Singh, Charan Singh son of Om Parkash, Chatar Singh son of Munshi Ram were seen running from the spot. I saw

that all these persons have colluded in the conspiracy of killing my brother. Then I reached at the spot, Krishna wife of Mahabir, Binnu wife of Karan Singh, Sheela daughter of Rameshwar Jat, residents of Kanwari, who was standing at the spot, on seeing me, entered into their house. After that I and members of my family, after taking my brother in my car, brought him to Civil Hospital, Hisar, where the doctors after checking my brother, declared him dead. The cause of vengeance is that Karan son of Mahabir and other accused had already been keeping grudge against my brother Sanjay, who had earlier also opened a killing assault on our house. A false case under Section 307 IPC has been got registered against my brother Nar Singh alias Sanjay. Suresh son of Giani Ram had contested election of Sarpanch against my brother Nar Singh alias Sanjay, in which Suresh was defeated. At the behest of Karan Singh son of Mahabir, resident of Kanwari, the aforesaid accused have committed murder of my brother Nar Singh alias Sanjay after shooting him. Strictest legal action may be taken against the aforesaid accused. I have got my statement recorded, same has been understood, which is correct. Sd/- Balwant Singh, Attested Jogender Singh PSI Police Station, Sadar, Hansi, Dated 4.3.2024."

3. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is Assistant Sub Inspector of Police and at the relevant point of time i.e. around 08:00-08:30 PM when the alleged incident is stated to have happened, he was on duty and was present at Dogran Mohalla, Hisar, along with HC Virender and Constable Kuldeep for the purpose of patrolling. He was not present at the scene of crime. Said version also finds support from copy of DDRs dated 03.03.2024 as Annexure P-1. As per version of the prosecution, the specific allegation against the petitioner is that when Nar Singh @ Sanjay was shot at by the assailants, he was seen running away from the spot. The entire occurrence was recorded in the CCTV footage. However, at the relevant time,

petitioner is not shown present in the said footage. The complainant arrived at the spot after hearing the gun shots and after a passage of considerable time i.e. more than 13 minutes, which shows that the story propounded by the complainant is concocted one. The house of the complainant is at a distance of more than 1 KM from the place of occurrence. The entire CCTV footage of the relevant point of time is contained in the Pen Drive, appended at Annexure P-2. The chronology of the occurrence is tabulated as under:-

Time	Description of events
8:26 p.m.	3 persons seen standing in front of house of Karan
8:26 p.m.	Shots fired on car make Creta while colour in which Nar Singh @ Sanjay was stated to be travelling. Assailants are not visible.
8:39 p.m.	Two persons approached near car. One of them is Balwant-complainant (after more than 13 minutes of the occurrence)
8:40 p.m.	Car of the complainant party approached car of Nar Singh @ Sanjay
8:42 p.m.	Complainant along with other persons took Nar Singh @ Sanjay in their car.

The occurrence took place on 03.03.2024 at about 8:00-8:30 PM but the FIR has been lodged next day i.e. 04.03.2024 at about 1:54 PM. There is an unexplained delay in lodging the FIR. As per prosecution version, name of the petitioner was disclosed in the disclosure statement of co-accused Karan, who was arrested on 09.03.2024. Copy of said disclosure statement is annexed as Annexure P-4. Challan has already been presented. On the day of incident due to darkness, the complainant could not identify 3-4 accused, who after firing ran away from the spot, but through

supplementary complaint dated 07.03.2024, he has revealed the names of said persons as Sumit @ Chhabra, Sachin, Aman, who were with Karan, Shamsher, Suresh, Kuldeep. It is further mentioned in the supplementary complaint that Sandeep (petitioner), Charan Singh, Chater Singh, Krishna, Binnu and Sheela, had hatched conspiracy of murdering his brother. Thus, the complainant in the supplementary complaint only levelled allegation of conspiracy against the petitioner. There was previous enmity between Karan and deceased and his family. The family members of the deceased had earlier tried to kill Karan (co-accused of this case), for which, Karan had got lodged an FIR No.84, dated 08.03.2023, under Sections 323, 307, 506, 34 IPC and Section 25 of Arms Act, Police Station Sadar, Hansi, District Hisar (Annexure P-7) against the deceased and Punit. The petitioner has been falsely implicated in the present case being distant relative of Karan.

4. Learned State counsel as well as learned counsel for the complainant have opposed this petition. It is submitted that on 07.08.2024, co-accused Shamsher Singh got recorded his statement (Annexure R-1) that he asked the petitioner to arrange the weapons and cartridges for killing the deceased Nar Singh @ Sanjay. Upon said demand of weapons and cartridges, the petitioner and one another person, namely, Kala Aduka, came at his home and gave 3 pistols, 4 magazines and 14 cartridges, which were used in the occurrence. The petitioner was found running from the spot immediately after the occurrence. The occurrence took place between

08:00-08:30 PM. The place of occurrence is hardly at a distance of 30 minutes travel from the police post as well as from Dogran, Sainian Mohalla. As per the DDR entries, the petitioner departed from police post at 05:15 PM on 03.03.2024 and returned at 09:55 PM. It was not difficult for the petitioner to be present at the place of occurrence and immediately thereafter return and to enter DDR about the return to police post. So much reliance cannot be placed on the entries of DDR (Roznamcha) Annexure P-1. The video is blurred and the assailants are not clearly visible. The specific stand of the complainant is that the petitioner ran away from the spot. One another witness Dharampal has made the statement and has specifically named the petitioner running away from the spot after the occurrence. As per the call record, the petitioner received many calls from the co-accused immediately after the occurrence.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. At the time of considering the anticipatory bail, the Court is required to consider factors such as the nature and the gravity of the offence, the role attributed to the applicant and the specific facts of the case. Reliance is placed on ***Pratibha Manchanda and another Versus State of Haryana and another, 2023(3) RCR (Criminal) 511***. The extract of said judgment reads as under:-

“17. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694***, this Court carefully considered the principles established by the Constitution

Bench in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** case. After a thorough deliberation, this court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.

Xxx xxx xxx"

18. In ***Sushila Aggarwal Versus State (NCT of Delhi), (2018) 7 SCC 731***, the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

In case *The State of Haryana Versus Samarth Kumar, 2022 LiveLaw (SC) 622*, it is held by Hon'ble Apex Court that the accused may be able to take advantage of the decision in *Tofan Singh Versus State of Tamil Nadu, (2021) 4 SCC 1* at the time of arguing the regular bail application or at the time of final hearing at the conclusion of trial. In the said case, accused was implicated on the basis of disclosure statement of co-accused.

6.1 Adverting to the facts of the present case, the allegations against the petitioner in the FIR are that around 08:00/08:15 PM, brother of the complainant was returning home after attending marriage, in his Creta car. The petitioner and Dharampal son of Ram Kumar were sitting outside their houses. When Nar Singh @ Sanjay reached near the house of Karan, three persons came in front of the vehicle, on the asking of Karan. His brother applied brakes. They fired at his brother. Bullets hit his brother at his stomach and shoulder. Blood started oozing out from his body. His brother became unconscious. Thereafter, the assailants ran towards their vehicle. The complainant saw the petitioner along with others fleeing from the spot. All of them were involved in hatching the conspiracy to kill his brother. The name of the petitioner also appeared in the disclosure statement of co-accused, Karan. In the supplementary complaint, names of four more assailants are mentioned who also fled from the spot and also that petitioner and other accused hatched a conspiracy to kill his brother. Thus, the allegations against the petitioner are, he fled away from the spot immediately after the occurrence and he also hatched conspiracy with other

accused to commit the instant crime. Shamsheer, co-accused, has also made disclosure statement that arms and ammunitions were supplied on the demand by the petitioner and one other person Kala Aduka. The petitioner is posted as Assistant Sub-Inspector of Police. He has produced copies of DDR No.19 and 27 dated 03.03.2024 to show that he was not present at the place of occurrence and was on patrolling duty in the area of Sainian Mohalla and Dogran Mohalla. The said place is not very far from the place of occurrence. The travel time to that place was only half an hour. The DDR No.27 with regard to return of police party in the police post is shown recorded after more than hour of occurrence. At this stage, much reliance cannot be placed on the said entries in the Daily Diary/Roznamcha. Moreover, those are self-serving documents and are of not much help to the petitioner at this stage. The petitioner is named in the FIR. There are disclosure statements of two co-accused naming the petitioner. There are also allegations against the petitioner that he being member of police force, supplied illegal arms and ammunitions to the co-accused Shamsheer Singh. The case is at investigation stage and at this stage, disclosure statements of co-accused cannot be ignored. As per the copy of FIR No.84, dated 08.03.2023 (supra), Nar Singh @ Sanjay (deceased) and his son Punit came on a motorcycle, fired shots at Karan, hitting at his abdomen and leg, so there was enmity between deceased and Karan. Karan, co-accused, is distant relative of petitioner. There is no document to suggest that petitioner is implicated falsely with a particular motive.

6.2 Although petitioner has placed on the file a pen drive containing CCTV footage of the place of occurrence, but at the initial stage and without authenticity of said footage, same is of no help to the petitioner.

7. In the light of above discussion, I am of the view that it is not a case where the petitioner is entitled for grant of anticipatory bail. Accordingly, the present petition is dismissed.

8. Anything observed hereinabove shall have no effect on the merits of the case as it is only for the purpose of deciding the present petition.

(GURBIR SINGH)
JUDGE

September 02, 2024
sanjeev

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