



CRM-M-39090-2024

-1-

281 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-39090-2024
Date of decision: 29th August, 2024

Bharat Kumar @ Kala

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sameer S. Tiwari, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 482 of
Bhartiya Nagarik Suraksha Sanhita (for short 'BNSS') seeking anticipatory
bail in the FIR mentioned below:-

FIR No.	Date	Police Station	Sections
74	18.07.2023	City Samana, Patiala	323, 341, 506/34 of IPC, 1860 (Section 307 added later on)

2. Brief facts of the case relevant for the purpose of disposal of
this petition are that on 15.07.2023, on receipt of a telephonic information
regarding admission of the complainant Gurjant Singh and his wife Asha
Rani in Civil Hospital, Samana due to injuries sustained in some altercation,
a police party reached there and after obtaining medico legal reports of the



CRM-M-39090-2024

-2-

injured and seeking opinion about their condition, on 16.07.2023, the statement of complainant Gurjant Singh was recorded who alleged that he was a labourer. On 11.07.2023, he along with some relatives had gone to Haridwar. They had left Haridwar on 14.07.2023 and on 15.07.2023, they had reached Panchmukhi Mandir, Samana where after offering sacred Ganga water in the temple, they had left for their home. The complainant was accompanied by his sons and wife at that time. At about 8:45 PM, when they had reached near a wine shop, they were intercepted by the petitioner-Bharat Kumar @ Kala and Pawan Mausla and their family members. They were armed with weapons. Accused Pawan Mausla and Sanju Mausla opened attack upon him by striking blows with *gandasi* which injured his head. He fell down. While screaming to save him, his wife fell upon him to save him and she too sustained injuries at the hands of the petitioner. Rescue alarms raised by them had attracted persons from neighbourhood and on seeing them, the petitioner and other assailants fled away. The complainant and his wife were rushed to the hospital and were admitted therein. After registration of FIR, investigation proceedings were initiated and are underway. Apprehending his arrest, the petitioner had moved an application for grant of pre-arrest bail before the Court of learned Additional Sessions Judge, Patiala which has been dismissed vide order dated 19.06.2024.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. Infact, on 26.06.2023, Suraj Kumar, Santi and Goldi who are



relatives of the complainant along with five unknown persons had caused injuries to co-accused Pawan, who is brother of the petitioner. Pawan had been admitted in hospital and DDR has been lodged by him. This FIR was a counter blast to the said DDR. Now the case bearing FIR No. 132 dated 24.11.2023 has been registered against the members of the complainant party under Sections 323, 325, 148 and 149 of IPC on the basis of complaint of accused Pawan as moved on 26.06.2023. There is delay in lodging of the FIR. No injury whatsoever had been caused by the petitioner to the complainant and he has got himself operated to entangle the petitioner and his brother in this case. No marks of injury on the back of the wife of the complainant have been found as per her medico legal report though, as per the version in the FIR, she was extended injuries on her back. The injury which has been declared dangerous to life on the person of the complainant has not been attributed to the petitioner. His custodial interrogation is not required. He is ready to join the investigation. No useful purpose would be served by detaining him in custody as such. It is urged that petition deserves to be allowed and the petitioner deserves to be extended benefit of anticipatory bail.

4. Status report has been filed by respondent-State. It is submitted therein and it is argued by learned State counsel that there are serious allegations against the petitioner who along with the co-accused assaulted the victim and his wife. All the six injuries sustained by the complainant have been opined to be dangerous to life. The victim had suffered multiple



fractures in skull and hemorrhage. Custodial interrogation of the petitioner is required for thorough investigation in the matter by the police as well as for recovery of weapon of offence. No extra ordinary or sparing circumstance has even otherwise been made out for the purpose of extending benefit of bail to the petitioner. The petitioner has tried to join the investigation several times and now proclamation has been ordered to be published against him for 01.10.2024. As such, petition is even otherwise as not maintainable after initiation of such proceedings. With these brought submissions, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. The petitioner along with the co-accused is alleged to have opened an assault upon the complainant and his wife as on the night of 15.07.2023 and to have caused several injuries to them. As per the medico legal report, as many as six injuries have been found on the person of the victim. Some of these injuries have been opined to be dangerous to life. The allegations against the petitioner are serious in nature. The fact that a case has been registered against the members of the complainant party as on 24.11.2023 by FIR No. 132, it cannot be assumed that the petitioner was not involved in the commission of subject offences. Moreso, as per the status report, proceedings under Section 82 of Cr.P.C. are being carried out against the petitioner and proclamation is ordered to be published against him for



01.10.2024. It is well settled proposition of law that once non-bailable warrants are issued or proclamation proceedings have been initiated, then the accused cannot seek benefit of pre-arrest bail. Reliance in this regard can be placed upon authorities cited as '*Prem Shankar Prasad Vs. State of Bihar and another, (2022) 14 SCC 516*', wherein the accused was absconding and concealing himself to avoid service of warrant of arrest. Proceedings under Section 82 of Cr.P.C. had been initiated against him. It was held that in a case where non-bailable warrants are pending and process of proclamation is issued, the accused is not entitled to relief of anticipatory bail. Reference can also be made '*Lavesh Vs. State of (NCT) Delhi (2012) 8 SCC 730*', wherein it was held that a person against whom warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant is not entitled to relief of anticipatory bail. As such, petition cannot be stated to be maintainable, in view of the fact that the proclamation proceedings have been initiated against the accused-petitioner.

7. Even otherwise, the well settled proposition of law is that the powers under Section 438 of Cr.P.C. are extra ordinary powers which are to be exercised in exceptional and sparing circumstances and the same should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. As this concession certainly interferes in the sphere of investigation of an offence to some extent, therefore, while granting the same, it is the duty of the Court to be circumspect and to grant such relief only when it is convinced that exceptional circumstances exist, which in my



considered opinion do not exist in this case keeping in view the nature of the allegations as levelled against the petitioner. As such, finding no merits in the petition, the same is dismissed.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

29th August, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |