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

**CRM-M No.39193 of 2024
Date of Decision: 12.08.2024**

Mohit

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail to the petitioner in case FIR No.0034, dated 17.02.2024, under Sections 148, 149, 323, 341, 365, 302 & 120-B of IPC and Section 25 of Arms Act, 1959, registered at Police Station Sadar Palwal, District Palwal, Haryana (Annexure P-1).
2. Succinctly the facts of the case are that the FIR in the present case was registered on the statement of first informant/complainant, namely, Rakesh. It was alleged that he along with his nephew, namely, Jugender (deceased) had gone to village Gailpur for a wedding on 16.02.2024. When they were returning on



their motorcycle, then near the bus stand, they were surrounded by the accused, namely, Krishna, Vishnu, Pawan, Lalit, Sulle, Rohit, Mohit i.e. the petitioner, Ajit, Bobby, Azad, Karnal, Bharat and 8-10 other persons. His nephew, namely, Jugender was forcibly thrown in the car and was taken to the forest of Kairaka village and all these culprits killed Jugender after beating him brutally with rods, sticks, axes and sharp weapons. Vishnu called Sandeep son of Satbir that they had killed Jugender who was lying in the Kairaka forest. On receiving the information, they went to the forest of Kairaka at night and made a search for Jugender. They found Jugender in injured condition with serious injuries on his head, hands and legs, who was conscious and told them the names of above culprits when they were bringing him to the Government Hospital, Palwal. The doctor of Government Hospital, Palwal referred him to Safdarjung Delhi and when they were taking him to Safdarjung, he died there. Request was made to take legal action against all the culprits. On registration of the FIR, the investigation commenced and some of the accused were arrested. However the petitioner could not be arrested. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Palwal praying for the grant of anticipatory bail. However after hearing both the sides, the learned Additional Sessions Judge, Palwal declined the same vide his order dated 09.07.2024. Hence the



petitioner is before this Court by way of filing the present petition for the grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner is a young boy, who is pursuing his Course at Haryana Fire & Safety College, Rewari and had returned home on 16.02.2024 at around 05.30 p.m. He submits that the occurrence in question had taken place in the night of same day. He has submitted that some people had the grudge against his elder brother, namely, Rohit and hence, falsely implicated the petitioner as well in the present FIR. He has submitted that in the year 2018, deceased Jugender had beaten Krishna and had broken his legs and hence, an FIR was registered against the deceased for which he was facing trial. Hence, Krishna, Pawan and Vishnu in order to take the revenge, planned to attack upon Jugender with their accomplices. He has submitted that on account of the same, the petitioner along with his brother has been implicated in the present case. He submits that there is no eye witness to the occurrence and the complainant has lodged the FIR on the basis of *hear say* evidence. He has submitted that the challan has been presented against the accused and there is no material against the accused in the present case. He thus submits that there being no evidence against the petitioner, he deserves to be granted anticipatory bail.

4. Notice of motion.



5. On asking of the Court, Mr. Sumit Jain, Addl. A.G., Haryana appears and accepts notice on behalf of the respondent-State. He has opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioner is specifically named in the FIR by the complainant. He has submitted that the petitioner had played an active role in the commission of offence. He submits that in the post mortem conducted, 19 injuries were found on the deceased. He submits that co-accused, namely, Rohit, Sagar, Harender @ Harro, Raj Kumar, Deepak, Harshit, Krishan Kumar @ Don and Pawan Kumar have been arrested and the challan has been presented against these 08 accused. However the remaining co-accused, namely, Vishnu, Mohit i.e. the petitioner, Ajeet, Bobby, Karnal, Azad, Bharat, Lalit, Sulle and Bholu are yet to be arrested. He has submitted that all the accused have committed a heinous offence and the custodial interrogation of these accused is required for free and fair investigation of the case. He thus submits that there being no ground for the grant of anticipatory bail, the present petition deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is deciphered that the first informant had specifically named the petitioner as one of the accused, who committed the murder of Jugender. Out of all the accused, 8 accused could be arrested and challan under Section 173 Cr.P.C. has been filed against them.



However rest of the accused including the petitioner could not be arrested till date. The submission made by learned counsel for the petitioner regarding his false implication is totally a matter of fair investigation.

8. For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) *Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*

- (i) *the nature and gravity of the accusation;*
- (ii) *the antecedents of the applicant including the fact as to whether he 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; and*
- (iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”*

9. As per the law settled by the Hon'ble Supreme Court, in

Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632,



while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. *In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory*



bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

10. The Hon'ble Supreme Court in ***State Vs. Anil Sharma, (1997) 7SCC 187***, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced



by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

11. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been prima facie found. The investigation is at its threshold. The allegations made during the investigation are found to be serious. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

12. In view of the overall facts and circumstances of the case, the petitioner does not qualify for the grant of anticipatory bail and as such the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

12.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No