



CRM-M-39855-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(131)

CRM-M-39855-2024

Date of Decision : 14.08.2024

Onkar @ Gollu and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohit Kakkar, Advocate and
Mr. Ramneek Singh, Advocate
for the petitioners.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)1. **Relief sought**

The jurisdiction of this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (old Section 438 Cr.P.C.) has been invoked seeking the concession of anticipatory bail to the petitioner in FIR No.112 dated 25.05.2024, under Sections 25 and 27 of Arms Act, 1959 registered at Police Station City Phagwara, District Kapurthala, Punjab.

2. **Contentions****On behalf of the petitioner**

Learned counsel for the petitioners would contend that it is purely a case of false implication once the petitioners were released on bail in all other cases as mentioned in paragraph No.3 of the petition, being seven in number during the year 2021-22. It is the case set up by the petitioners that once they were on bail in all cases as stated above in the year 2023, the police



has nominated the present petitioners in the instant case just because they had bad antecedents and certain weapons were recovered from one vehicle i.e. a black colour Safari Car bearing registration No.PB-02-BL-6743, which was lying abandoned as ownership of the said car is not with the petitioners.

On behalf of the State

Learned State Counsel appearing on advance notice on instructions from SI Nirmal Singh opposes the prayer for grant of anticipatory bail on the grounds that the allegations against the petitioners are of serious nature. He further submits that custodial interrogation of the petitioners is necessary in the present case and opposed the concession of anticipatory bail to the petitioners.

3. **Analysis**

On a specific query being put forth to the State, Mr. Rajiv Verma, DAG, Punjab on instructions from SI Nirmal Singh would submit that the car is registered under the name of one Gurmail Singh son of Mohinder Singh but could not refer to any incriminating material from the case file brought by SI Nirmal Singh, to assist the learned State counsel.

In light of the above, this Court does not find any reasons to disbelieve the assertions of learned counsel for the petitioners at this stage as far as consideration of anticipatory bail is concerned.

Hence in the absence of any incriminating and cogent material produced before this Court, the petitioners do not deserve to be taken into custody as “*Bail is the rule and jail is an exception*” is a settled law by Hon’ble the Supreme Court in its latest judgment passed in ‘***Jalaluddin Khan vs. Union of India***’ 2024 Live Law (SC) 571 and even an accused is also entitled to a legal right of bail as enshrined under Article 21 of the



Constitution of India.

Be that as it may, after giving a thoughtful consideration to the submissions made by learned counsel for both the parties, particularly to the submission made by learned State Counsel, this Court is not in consonance to the reasons seeking custodial interrogation of the petitioners as the present case is based upon the documentary evidence and forgery, if any, which is yet to be established and can be ascertained, in case the petitioners are granted some protection at this stage. Hence, this Court finds no reason to deny the petitioners the concession of anticipatory bail if the petitioners have *bona fide* intentions and are willing to join the investigation and cooperate for furtherance of the same so that the final report can be submitted by the Investigating Agency in time.

4. **DECISION**

Hence, in view of the prevailing facts and circumstances in the instant FIR, the petitioners are directed to be released on anticipatory bail in the event of their arrest subject to their joining investigation and reporting to the Investigating Officer concerned within a period of 10 days from today, on furnishing of personal/surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioners shall also abide by the terms and conditions as envisaged under Section 438(2) of Cr.P.C which are reproduced below :-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to



- any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under subsection (3) of Section 437, as if the bail were granted under that section.

However, it is made clear that in case the petitioners do not comply with the aforesaid direction of joining the investigation within 10 days from today, the order passed by this Court today shall automatically stand cancelled.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

August 14, 2024
Manpreet

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