

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-56389-2023

Date of Decision:-24.01.2024

Harish Kumar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Munish Behl, Advocate for the Petitioner.

Mr. Ravish Kaushik, Additional Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.249 dated 18.10.2023 under Sections 148, 149, 323, 452, 506 IPC (Section 308 IPC added later on) registered at Police Station Sector 9, Ambala City, District Ambala.

2. The present FIR came to be registered at the instance of Ayush Grover which reads as under:-

“ Copy of Ruqa is as follows: Statement of Ayush Grover son of Mittarpal, resident of House No. 865, Sector-9, Ambala City, Mobile No. 92152-33333. Stated that 1, the above named, am resident of above stated address. Today, on dated 18.10.2023, at about 11:30, I and my cousin ('chachera') brother Sunny Grover were sitting in our office at Shivam Property, Patel Nagar, Opposite Gate No. 4, Sector-9, Ambala City, and then the owner of Vinayak Motor namely Rinku alias Khan alongwith 5-6 companions, to whom I know by the name of Harish, Khwaish, Tufani, came to my office, and attacked upon me and my cousin ('chachera') brother Sunny, with an intention to kill.

For killing us, we were attacked on head, by iron rod and sword, our cash of Rs. 43,000/- was also snatched and they also carried out breakage in the shop. We, with great difficulty, after running away from there, saved our life, and the persons standing there namely Sukhi and Sanjay Lamba saved us and somehow they took us to Civil Hospital Ambala City, where the doctor treated us, and since my cousin brother Sunny suffered grievous injury in head, who was not able to suffer statement and he, for the purpose of treatment was referred by Civil Hospital Ambala City to PGI/Sector 32 Chandigarh but condition of Sunny being very serious, we took him to Narayan Hospital Ambala City. Appropriate legal action may kindly be taken against all the accused persons. I have got recorded my statement to you, heard and the same is correct. Attested Sanjay Kumar HC, Sector-9 Ambala City. Sd/- Ayush 9215233333.”

During the course of the investigation, witnesses Sukhwinder Singh @ Sukhi and Sanjay Lamba who had taken the complainant Ayush Grover and his cousin Sunny Grover to Civil Hospital, Ambala City got recorded their statements.

The IO took the complainant Ayush Grover in the area of Jandali where he (complainant) identified Rajak Ali and Monu Maurya. Both were apprehended at the spot;.

Based on their respective disclosure statements the premises of Harish Kumar (petitioner), Khawish and Jasmeet @ Tufani were raided.

Qua the injuries on Sunny Grover, after examining the CT Scan and MRI, the injuries were found to be grievous having been caused with the blunt weapon. His statement was recorded and on the basis of the opinion of the doctor, it was found that the offence under Section 308 IPC had been committed and the same was added in the present case.

During the further investigation, other independent witnesses were examined and it came to light that the injured had suffered injuries with the help of clay bowl (*kasora*) and not with swords/iron rods and an amount

of Rs.43,000/- had not been snatched.

During the course of investigation, it came to light that it was the petitioner who had given a blow of a clay bowl (*kasora*) on Sunny Grover which injury attracted Section 308 IPC.

3. The Counsel for the petitioner contends that he has been falsely implicated in the present case. No specific role or injury has been attributed to him. As he was ready and willing to join investigation and some of the co-accused had been granted the concession of anticipatory bail, he was entitled to the similar concession.

4. The Counsel for the State on the other hand has filed a reply by way of affidavit of Mr. Ramesh Kumar, DSP, HQS, District Ambala, which is taken on record. While referring to the same, he contends that as per the prosecution case, it was the petitioner who was the main accused having caused the injury attracting Section 308 IPC. Therefore, his case was different from that of his co-accused who had been granted the concession of anticipatory bail. The nature of the allegations levelled against him did not entitle him to the concession as prayed for.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", 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 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***”.

7. A perusal of the record would reveal that the petitioner is the main accused having been attributed the injury attracting Section 308 IPC. Therefore, the offence *prima facie* stands established against him.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.

9. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition 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

January 24, 2024
Vinay

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