

CRM-M-60239-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-60239-2023 (O & M)

Date of decision:19.01.2024

Shyamvir @ Raj Katariya

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.C. Shahpuri, Advocate,
for the petitioner.

Mr. Ravish Kaushik, Addl.A.G., Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.301 Dated 03.11.2023 Under Sections 147, 149, 323, 341, 342 and 506 IPC (Sections 365, 285 IPC and Sections 25-54-59 of the Arms Act added later on) registered at Police Station Mundkati, District Palwal.

2. The present FIR came to be registered at the instance of Shanu son of Dharamvir and reads as under:-

“To the SHO, Police Station Mundkati Hodal. Subject: - For taking legal action against assailants. Sir, it is submitted that I, Shanu s/o Sh. Dharamvir, am resident of H. No. E-842, Dabua Colony, Faridabad, Haryana. I am working in the company under the name and style H.D.M Properties. On 29.10.2023 at 11:00 AM, I alongwith my friend Anil and clients had left the office YMCA Chowk for making them see the Auangabad Meetrol Site near MVN College. At about 1:00 PM, when I was showing the site along to the clients, 8-10 people came in two

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Scorpions bearing No.HR51BD33332 AND HYUNDAI 110 without number with the common intention. In one of the Scorpions, Shyamvir @ Raj Kataria s/o not known resident Amaru get down and opened fire in the air and Deepak s/o not known resident of Maanpur also opened fire in the air and all the persons came out from the vehicles. Firstly Shyamvir @Raj Kataria s/o not known, resident of Amaru, Second Deepak s/o not known resident of Maanpur, Third Nepal s/o not known resident Amaru, Deepak s/o not known resident of Aamru, Sumit s/o not known, resident of Amru and other persons armed with sticks, iron sticks and sharp weapons. Firstly, Shyamveer @ Raj Kataria gave rod blow on my left foot, Nepal gave rod blow on right foot and thereafter, they all attacked upon me. There is fracture in my hands and feet and I have also received grievous injury on my back. Thereafter, they have dragged me inside the Car Hyundai 110, with an intention to kill me. At the same time, the clients and Anil raised an alarm and went for calling the people in the neighbourhood for help. During this time, Shyamveer @ Raj Kataria has snatched Rs.90,000/- from my pocket. Seeing the passerby, they thrown me in the bushes and while leaving they threatened me that today you have saved, but if you complain the police, you would be eliminated. Hence, it is requested with folded hands that strict legal action be taken against the accused. I shall be highly thankful to you for this. Sd/- Shanu s/o Sh. Dharamvir resident of E-842, Dabua Colony, Faridbabad. Dt. 03.11.2023”.

3. Pursuant to the registration of the FIR, during the course of verification, Sections 365, 285 IPC and Sections 25-54-59 of the Arms Act were also added.

4. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. The alleged

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incident took place on 29.10.2023 whereas the FIR came to be registered on 03.11.2023. This delay was fatal to the case of the prosecution as due deliberations and consultations could not be ruled out. In fact, one Himanshu Sharma was inimical to the petitioner on account of a business dispute and the present FIR had been registered at his instance and with his connivance. However, taking the allegations to be correct, the offence, if any, would be one under Section 325 IPC which was a bailable offence. He, therefore, contends that the petitioner was entitled to the concession of anticipatory bail.

5. The learned counsel for the State, on the other hand, has filed a reply/status report dated 09.01.2024 which is taken on record. While referring to the said reply, he contends that the complainant suffered three fractures on the femur, third Metacarpal, second Metacarpal and his knee joint was also displaced. Therefore, the nature of injuries and the brazen manner in which the occurrence took place did not entitle the petitioner to the grant of the pre-arrest bail. Even otherwise, as the offence was *prima facie* established and the weapon of offence i.e. pistol was to be recovered, therefore, the petitioner was not entitled to the concession of anticipatory bail.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', 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*

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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.”

8. Quite apparently, the allegations against the petitioner and his co-accused are grave. Not only did the petitioner fire in the air but he also caused grievous injuries to the injured alongwith his co-accused.
9. In view of the nature of the allegations levelled against the petitioner coupled with the fact that the recovery of the weapon of offence is to be effected from him, I do not find any reason to grant him the concession of anticipatory bail. Therefore, the present petition stands dismissed.
10. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application 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 19, 2024
sukhpreet

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