

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

CRM-M-62617-2023

Date of Decision:-24.01.2024

Bablu Pandey.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Mukesh Kumar Bhatnagar, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

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.72 dated 27.07.2023 under Sections 323, 341, 452, 506, 148, 149 IPC registered at Police Station Division No.3, District Police Commissionerate, Ludhiana.

2. The present FIR came to be registered at the instance of Durgesh Kumar Soni which reads as under:-

“ Statement of Durgesh Kumar Soni Son of Ram Pher Soni, resident of Village Maskanwa, District Goda U.P. at present tenant at House No. B-023-10294, Street No.02 Mohalla Shivaji Nagar, Ludhiana, age about 38 years, Mobile No. 83602-52265. Stated that I am resident of the above-mentioned address. I have my own DJ Work at Jalampur. I live on rent in Street No. 02, Mohalla Shivaji Nagar Ludhiana. Bablu and his wife Nitya also reside in this house. This house has two gates. One gate is towards Bablu's house and the other gate is on the street. On 21-07-2023 at around 09-00 PM, I was present in my room and our neighbor's children were repeatedly

coming inside the street gate to call Bablu's children. I closed the main gate of the street and said that you should come through the gate affixed at another side. Meanwhile, Bablu Pandey son of Ganga Sagar Pandey came out of the room, who started talking to me that why have you closed the gate, we both had an argument. Bablu's wife Nitya and my wife started fighting to each other, then Bablu started arguing with my wife. When I stopped Bablu, Bablu started manhandling with me. In the meantime, I gave him one slap, but Bablu picked up my bucket and hit it to me. Then Bablu was taken inside the room by his wife and I was also locked inside the room by my wife. Later, I was standing outside in the street after eating food, when it was around 09.30 PM, around 6-7 motorbikes but some 15-20 unidentified boys came by carrying Kirpans, Datar, Beswal in their hand and empty glass bottles were in the sacks and they immediately went to my room. Seeing all this, I ran to my brother Sarvesh Kumar's house, who lives in the house situate next to 2- 3 houses away, entered and locked the gate. I started looking down on the roof that they should not beat up my children, I saw that Bablu and his wife Nitya told them that he is at the roof. All these people later climbed up to the roof by climbing the wall of my brother's house with help of each other and in the meantime, one boy attacked at my head with iron Punch, the other boy opened the gate of the house, then all 15-20 unknown boys, who had Kirpans, Datar and Beswal in their hands hit me on the head several times. My left arm was attacked with a kirpan, due to which I suffered a cut mark at my wrist and these unknown boys hit me with empty glass bottles on my head. I fell down due to suffering serious injuries. One of these unidentified boys said to shoot it. Then they left me half dead and threatened me that now we will see as to how you can fight with Bablu. My brother Sarvesh Kumar arranged a private vehicle and took me to Civil Hospital Ludhiana, where the doctors referred me to Chandigarh, Sector 32 due to severe injuries after giving first aid. I was treated at Sector 32 Chandigarh Hospital. Today, I was coming with my brother Sarvesh Kumar to give information to you, so you have met us. Until now, we were talking about compromising the matter with Bablu Pandey, which did not succeed. Legal action should be taken against Bablu Pandey son of Ganga Sagar Panday and 15-20 unidentified persons. Today I got recorded my statement to you in the presence of my brother Sarvesh

Kumar. Sd/-.”

3. After the registration of the FIR the investigation began and the statements of witnesses were recorded under Section 161 Cr.PC. The X-Ray report of the complainant was obtained and the doctor opined that the injury no.2 was grievous in nature and Section 325 IPC was added in the above said FIR vide G.D. No.19 dated 27.09.2023.

4. The Counsel for the petitioner contends that he has been falsely implicated in the present case. There was an unexplained delay of 05 days in the registration of the FIR. The occurrence took place on 21.07.2023 whereas the FIR was registered on 27.07.2023. Taking the allegations to be correct the injury no.2 stated to be grievous in nature was on the wrist. As the petitioner was ready and willing to join investigation, he was entitled to the similar concession.

5. The Counsel for the State on the other hand has filed reply dated 22.01.2024 by way of affidavit of Mr. Sukhnaaz Singh, Assistant Commissioner of Police, (Central), Ludhiana, which is taken on record. While referring to the same, he contends that the allegations against the petitioner were grave. All the accused including the petitioner entered the house of the brother of the complainant and committed the offences in question. The complainant had suffered a grievous injury in the occurrence. Therefore, the manner in which the occurrence took place along with the injury suffered by the complainant did not entitle him to the concession as prayed for.

6. I have heard learned Counsel for the parties.

7. 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**”.*

entered the house of the brother of the complainant causing him multiple injuries including the one grievous. The manner in which the occurrence has taken place does not entitle the petitioner to the grant of bail as the offence stands *prima facie* established against him.

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

10. 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