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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-58817-2024

Date of Decision : 26.11.2024

Kulwinder Singh @ Raja and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Anil Kumar Garg, Advocate
for the petitioner.

Mr. Vinay Kumar Malhotra, DAG Punjab

KIRTI SINGH, J.(Oral)

1. Apprehending arrest in FIR No.0092 dated 22.10.2024 under Sections 103(1), 3(5) of BNS, 2023 registered at Police Station Chamkaur Sahib, District Rupnagar, the petitioners have preferred this petition under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail.
2. The contents of the above-mentioned FIR are reproduced herein below :-

“Statement of Himmat Singh, son of Nachhatar Singh, resident of village Shantpur police station Sri Chamkaur Sahib District Rupnagar, aged about 38 years, Mobile phone 99150-92431, stated that I am a resident of the above said address. I am engaged in shuttering work. Gurinder Singh @ Jogi is the son of my paternal uncle Gurdev Singh and paternal Aunt Charanjit Kaur. On 19.10.2024, at around 06:00PM, I was informed by Amrik Singh son of Ajaib Singh, of my village that Gurinder Singh @Jogi, son of Gurdev Singh, had met with an accident at Kotli Turn (Mod). I along



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with Amrik Singh, reached at the spot. When I could not find my brother Gurinder Singh, we went towards Sri Chamkaur Sahib side at the same time to search for him. Gurinder Singh had left home to go to the market at Sri Chamkaur Sahib side. When we reached near the Primary School bus stop, near to village Ghadhram Khurd, there was a large gathering of people. At that time, Satwinder Singh son of Himmat Singh and Avtar Singh son of Janak Singh, residents of Village Ghadhram Khurd, who were present at the spot, told us that Gurinder Singh @ Jogi was running on foot from the side of village Talaapur and when he reached near the Primary School bus stop, near to our village Ghadhram Khurd a motorcycle, made platina, bearing number PB-12-AB-6227, driven by Sardar person, hit Gurinder Singh on the head with punch while he was running, causing him to fall on the road. After that, the person stopped his motorcycle, picked up a stick lying on the roadside, and started hitting Gurinder Singh with full force on his head, face, back and legs. Meanwhile, a pedestrian with a turban on his head who was running from the side of Village Talapur, arrived and started slapping punching and kicking Gurinder Singh, who was lying on the ground. The pedestrian was saying that this person had hit our brother Naib Singh's motorcycle and injured him and then he ran away. The person who gave the statement further said that we managed to rescue Gurinder Singh from them with great difficulty. Satwinder Singh said that he called the ambulance number 108 and sent Gurinder Singh to Civil Hospital, Rupnagar for treatment. During the treatment, Gurinder Singh passed away on 21.10.2024 at the Civil Hospital Rupnagar. The person who brutally assaulted my brother Gurinder Singh @ Jogi, names of those persons were later revealed to me as Dharaminder Singh @Rinka and Kulwdiner Singh @ Raja sons of Dial Singh residents of Village Duggri, Police Station Chamkaur Sahib, District Rupnagar. My brother Gurinder Singh has died due to being beaten up by these persons. Legal action should be taken against them. Statement has been got recorded to you in the



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presence of Satwinder Singh son of Himmat Singh resident of Village Ghadram. Sd/ Himmat Singh."

3. Learned counsel for the petitioners *inter alia* submits that the petitioners have been falsely implicated in this case and there is a delay of three days in registration of the FIR and the police has not taken any opinion from the Doctor regarding the cause of death of the deceased.

4. Per contra, learned State counsel has opposed the prayer made by learned counsel for the petitioners and submit that the petitioners have been specifically named in the FIR and there is an eye witness of the occurrence. He further submits that there are eight injuries inflicted upon the deceased.

5. Heard the rival submissions made by learned counsel for the parties and perused the record.

6. In ***Srikant Upadhyay and others vs. State of Bihar and another, 2024 (INSC) 202 (SC)***, Hon'ble Supreme Court held as under:

"It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr. 2010 (1) SCC 679).

Further, it was clearly observed in para NO. 24 of the judgment (supra) that "though in many cases it was held that bail is said to be



a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

7. In ***Sushila Aggarwal v. State (NCT of Delhi) (2018) 7 SCC 731***, the Constitution Bench reaffirmed that when considering applications for anticipatory bail, Courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

8. In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon’ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.

9. There are serious allegations leveled against the petitioners. The petitioners have been specifically named in the FIR and there are eight injuries



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inflicted upon the person of the deceased and the opinion of the doctor regarding cause of death is awaited. Accordingly, to unearth the true dimension of the alleged crime, this Court does not deem it appropriate to interfere in the matter so as to grant the concession of anticipatory bail to the petitioners at this stage.

10. The petition is dismissed.
11. Needless to mention that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

26.11.2024
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(KIRTI SINGH)
JUDGE

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