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**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.59403 of 2024

Date of Decision: 28.11.2024

Rajesh Kumar

..... Petitioner

Versus**State of Punjab and another**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of BNSS, 2023 praying for the grant of pre-arrest bail/anticipatory bail to the petitioner in case bearing FIR No.264 (Annexure P-1), dated 10.11.2024, under Sections 109 of BNS, 2023 and Sections 25 & 27 of Arms Act, 1959, registered at Police Station Rama Mandi, District Jalandhar.

2. Succinctly the facts of the case are that FIR in the present case was registered on the statement of Prince Sharma wherein it was alleged that on 09.11.2024 at about 11:08 p.m., he was standing in the balcony of his house and in the meantime, a Swift Car came in which two persons were travelling. The person sitting on the conductor side was having a weapon in his hand and he fired a shot on him. In order to save



himself, he ran inside the house. After having been fired, the persons travelling in the car fled away. He checked the CCTV footage and found that the car in which the assailants had come belong to Rajinder Singh. It was alleged that there is a dispute already going on between him and Rajinder Singh, however the same was compromised with the efforts of respectables but Rajinder Singh kept the enmity in his mind and thus he along with one unknown person had fired upon him. The request was made to take the legal action. On the registration of the FIR, the investigation commenced. During the investigation, the car driver, namely, Rajinder Singh was arrested on 10.11.2024 and name of the petitioner also surfaced in the alleged occurrence. Thus he was also named as an accused in the present case. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Jalandhar praying for the grant of anticipatory bail. However on hearing both the sides, the learned Additional Sessions Judge, Jalandhar finding no merit, dismissed the same vide his order dated 22.11.2024. Hence being aggrieved the petitioner is before this Court by way of filing the present petition praying for the grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that neither the petitioner is named in the FIR nor there is any role attributed to him, however he has been falsely implicated in this case. He has submitted that the petitioner has been named in the present FIR on the basis of confessional statement made by the co-accused, namely, Rajinder Singh, which is not an admissible evidence. He has submitted



that co-accused has already been arrested and the recovery of weapon has also been effected from him. He has submitted that there being no *prima facie* case having been made against the petitioner, he deserves to be granted anticipatory bail.

4. Notice of motion to official respondent No.1 at this stage.

5. On asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of respondent No.1-State. He however has opposed the submissions made by learned counsel for the petitioner. He has submitted that during the investigation, the CCTV footage was examined and co-accused, namely, Rajinder Singh was arrested and thus, identity of second person was established to be of the present petitioner. He has submitted that the complainant was fired upon and the weapon of the offence has been recovered from the co-accused. He has thus submitted that both the petitioner and co-accused, Rajinder Singh have committed the offence as alleged. He has submitted that the investigation is at the initial stage and thus no case is made out for the grant of anticipatory bail to the petitioner. He submits that there being no merit, the present petition deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is deciphered from the facts and circumstances of the case that the complainant lodged the FIR on the allegation that he was fired upon by the accused while he was standing in his balcony. On the examination of CCTV footage and the disclosure statement made by co-accused,



Rajinder Singh, who was arrested on 10.11.2024, the identity of the petitioner to be the second incumbent of the car was established.

8. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) BNSS which reads as under:-

Direction for grant of bail to person apprehending arrest.

- (1) *Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*
- (i) *the nature and gravity of the accusation;*
 - (ii) *the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;*
 - (iii) *the possibility of the applicant to flee from justice; and*
 - (iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.*

9. As per the law settled by the Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632***, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would always prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-



“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival



of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

10. The Hon'ble Supreme Court in ***State Vs. Anil Sharma***, (1997) 7SCC 187, held as under:-

“6.We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.



11. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been prima facie found. The investigation is at its threshold. The offence alleged against the petitioner is of serious nature. In the facts and circumstances of the case, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

12. In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

28.11.2024
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(RAJESH BHARDWAJ)
JUDGE

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