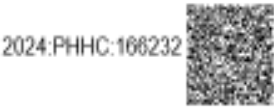


CRM-M-62618-2024
CRM-M-62620-2024
CRM-M-62622-2024

-1-

132 (3)



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62618-2024
DECIDED ON: 12.12.2024

KULWINDER KAURPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CRM-M-62620-2024



GURCHARAN SINGH @ GAGGI SINGH @ HARCHARAN SINGH
.....PETITIONER

VERSUS

STATE OF PUNJABRESPONDENT



CRM-M-62622-2024

CHAMKAUR SINGHPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner(s).

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 482 BNSS, has been invoked seeking anticipatory bail to the present petitioner in case FIR No.133 Dated 05.11.2024 under Sections: 333/329 (4)/191 (3)/190/115 (2)/324(4)/62 of Bhartiya Nyaya Sanita (BNS) 2023 Police Station: Nathana, District Bathinda, Punjab (Annexure P-1).

Vide this common order, this Court shall dispose off all the above-said petitions.

Just to avoid repetition, the facts of the case are taken from CRM-M-62618-2024.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

‘Statement of Hamir Singh son of Karnail Singh resident of Poohla aged 75 years. Mobile no. 7009233136. Stated that I am resident of above said address. I am doing domestic works. I have a son named Pritpal Singh aged about 49 years. He has constructed his house in Bathinda and is residing at there. On dated 31.10.2024, my son Pritpal Singh visited me in village Poohla. We both father and son were present at our house. It will be 12:40/12:45 afternoon that suddenly the our gate in the street was knocked. We came outside and saw that our neighborer Chamkaur Singh son of Balwinder Singh was causing damage to the lock of the gate of our house. He jumped from the wall and entered into our house. He was having a sword. While I was saying him, he has broken the lock of the gate in the street. His wife Kulwinder Kaur was empty hand and was accompanied with Gaggi Singh, Harcharan Singh @ Gurcharan Singh resident of Bodiwala and Wakil Singh resident of Mansa Khurd were armed with sticks. They have broken the lock of gate in the street and with

intention occupation entered in our house. They were also accompanied with 10/15 unknown persons armed with iron sabal etc. Chamkaur Singh raised lalkara and said that let us teach them lesson. Chamkaur Singh given blow of his sword at me and it was hit on the palm of my left hand. Then Gaggi Singh given blow of his dang at me and it was hit at my left thigh. I fell down. When my son Pritpal Singh came ahead to save me. Then Kulwinder Kaur, Harcharan Singh and Wakil Singh stopped my son Pritpal Singh. The unknown persons sitting on the spot were raising lalkara and were causing damage to our wall. They pelted brick bats and caused damage to the camera installed in our house. Then we raised clamor. All of them ran away from the spot along with their weapons on their tractor Sawraj No. PB30N2643 with trolley, which was loaded with sand and crasher as well as on white colour swift car no. PB03AM6404. Then Nardev Singh son of Gurjiwan Singh resident of Poohla arranged private vehicle and got me admitted in Civil Hospital Nathana for treatment. From there the doctor referred me to civil hospital Bathinda. The reason behind the grudge is that we are pursuing dispute with Chamkaur Singh. Earlier, he had also committed attack on us. Earlier, I had registered FIR No. 104/2024 Under Section 109 BNS in PS Nathana. They in connivance with each other have inflicted injuries to me. I am claimant. Action may kindly be taken against Chamkaur Singh, Kulwinder Kaur, Wakil Singh, Gurcharan Singh @ Harcharan Singh, Gaggi Singh and 10/15 unknown persons. The matter was being negotiated for patch, but it could not be done. I have recorded my statement before you, which has been read over and is correct.'

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner(s) argues that the petitioner(s) have been falsely implicated in the present case. It is further argued that petitioner No. 1 was empty-handed at the time of the alleged incident, and therefore, no

injury has been attributed to him. As for petitioner No. 2, it is claimed that he struck the complainant with a stick on the left thigh. Regarding petitioner No. 3, it is alleged that he struck the complainant with a sword on the palm of the left hand, which is a non-vital part of the body. It is submitted on behalf of the petitioner(s) that they are ready and willing to join the investigation.

On behalf of the respondent/State

Mr. Jaspal Singh Guru, AAG Punjab, appearing on advance notice prays for dismissal of the present petition on the ground that the allegation against the present petitioner(s) are serious in nature, as they inflicted serious injuries on the person of complainant and, therefore, their custodial interrogation is required.

Mr. G.S. Sandhu, Advocate has put in appearance on behalf of the complainant and has filed Power of Attorney, which is taken on record. He prays for dismissal of the present petition on the ground that petitioner(s) in connivance with 10-15 unknown persons inflicted serious injuries with deadly weapons on the person of the complainant.

4. Analysis

This court cannot ignore the fact that petitioner(s), along with others, formed an unlawful assembly armed with deadly weapons, with the common intent to cause harm to the complainant. They entered the complainant's house and inflicted injuries upon him. The petitioners' name is specifically mentioned in statement and the FIR. Therefore, the offences involved are of a serious nature.

As far as the contention of learned counsel for the petitioner(s) that petitioner No. 1 was empty-handed and no injury was attributed to her, this argument holds no weight as she raised a "*Lalkara*" and was part of the unlawful assembly, which was sufficient to create a state of fear for the complainant, who is

over 60 years old. The mere submission that the petitioner(s) are ready and willing to join the investigation does not vest a right for grant anticipatory. The case made out against the petitioner(s) is certainly a relevant ground for denial of anticipatory bail in the case in hand at this stage.

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

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in “State vs. Anil Sharma”; (1997) 7 SCC 187, held as under:-

“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 favourable 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 material 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 needs 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.”

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner(s) is certainly required. Therefore, I find no merit in the instant petitions, hence, the same are hereby dismissed.

CRM-M-62618-2024
CRM-M-62620-2024
CRM-M-62622-2024

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

A copy of this order be placed on the file of another connected case.

12.12.2024
Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>