



109

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

CRM-M No.64443 of 2024

Date of Decision: 19.12.2024

Jatinder Singh

..... Petitioner

Versus**State of Punjab**

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Jasdeep Singh Salooja, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed praying for the grant of anticipatory bail to the petitioner in case bearing FIR No.0137, dated 01.11.2024 (Annexure P-1), under Sections 331(4), 305, 304, 3(5) of Bharatiya Nyaya Sanhita (BNS), 2023, registered at Police Station Khilchian, District Amritsar Rural. Further prayer has been made for granting the interim bail to the petitioner during the pendency of the present petition.

2. Succinctly the facts of the case are that the FIR in the present case was registered on the statement of complainant, namely, Jasbir Singh son of Mohan Singh. It was alleged that on 31.10.2024 while he and his wife, namely, Sukhbir Kaur were sleeping then they heard a noise in the night at about 9.30 P.M. They saw three persons



entering their house by climbing the wall of their house. On seeing them, they raised alarm, however one of the person snatched the gold earrings of his wife, Sukhbir Kaur. Out of the three, he recognized 02 of the persons. One of them was Amritpal Singh @ Pali and other was his brother, namely, Nishan Singh. Thereafter, they jumped over the wall and escaped from the spot. On checking the house, they found that Rs.25,000/- and two gold earrings were missing from the cupboard. It was alleged that Amritpal Singh and Nishan Singh along with their accomplice had entered their house in the night and committed theft and forcibly removed the earrings of his wife. The action was sought be taken against the culprits. On registration of the FIR, the investigation commenced. During the investigation, complicity of the petitioner surfaced in the case. Hence, he was also arrayed as an accused in the present case. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Amritsar. However, after hearing both the sides and finding no merit in the same, the learned Additional Sessions Judge, Amritsar dismissed the petition filed by the petitioner vide his order dated 19.11.2024. Hence the petitioner is before this Court by way of filing the present petition praying for the grant of anticipatory bail.

2. Learned counsel for the petitioner has vehemently contended before this Court that the petitioner has been falsely implicated in this case. He has submitted that neither the petitioner has been named nor there is any role attributed to him. He has submitted that the petitioner



has been named in the present case on the basis of presumptions and assumptions. He has submitted that it is on the basis of disclosure statement of the co-accused, the petitioner has been implicated in the present case and as per the settled proposition of law, the disclosure statement of co-accused is not an admissible evidence. He has submitted that though the petitioner is involved in one more case i.e. FIR No.158, dated 31.07.2017, under Section 379, 411 of IPC, registered at Police Station Jandiala, District Amritsar Rural but the petitioner is already released on regular bail in that case vide order dated 10.08.2017. He has submitted that there being no *prima facie* case having been made out against the petitioner, he deserves to be granted anticipatory bail.

3. Notice of motion.

4. On asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State. He however has opposed the submissions made by learned counsel for the petitioner and has submitted that during investigation, it has been found that third person along with co-accused was the petitioner. He has thus submitted that the case is under investigation, thus granting bail to the petitioner would scuttle the ongoing investigation. He has thus submitted that the petition being devoid of any merit deserves to be dismissed.

5. The Court has heard learned counsel for the parties and perused the record with their able assistance.

6. As deciphered from the facts and circumstances of the case that the FIR was lodged by the complainant on the allegation that three



persons committed the theft in his house and gold earrings of his wife were forcibly removed and taken after entering the house. The complainant could recognize two of the co-accused, however the third one could not be recognized. On the arrest of the co-accused, the disclosure statement of the co-accused was recorded and it was found that third person was the petitioner. As per record, the petitioner is involved in one more case of similar nature bearing FIR No.158, dated 31.07.2017. The investigation is at threshold and the allegations against the petitioner are of serious nature.

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

“Direction for grant of bail to person apprehending arrest:

- 1. When 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; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
- 2. When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*
 - (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
 - (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
 - (iii) a condition that the person shall not leave India without the previous permission of the Court;*



(iv) *such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.*

3. *If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).*

4. *Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023."*

8. 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."



9. 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.”

10. 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. Needless to say, the investigation is at threshold and in the facts and circumstances, custodial interrogation of the petitioner would be essential and granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.



11. 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.

19.12.2024
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(RAJESH BHARDWAJ)
JUDGE

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