

2025 PHHC 005883



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

**CRM-M-1993-2025
DECIDED ON: 16.01.2025**

ANKISH**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Tejas Bansal, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG Haryana

Mr. Sanpreet Sandhu, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 482 of BNSS, 2023, has been invoked seeking anticipatory bail to the petitioner in case FIR No. 274, dated 23.12.2024, under Section 25 of Arms Act and Sections 109(1), 115, 190, 191 (3) and 351(3) of BNS, 2023, registered at Police Station Farakpur, District Yamuna Nagar, Haryana.

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

“Statement of Rohan Rajbhar son of Jagan Rajbhar resident of House no. 64 Sundar Vihar Colony District Yamuna Nagar aged 17 years mobile no. 7206975925. stated that I am resident of abovementioned address and am student of 12th class in S.D. Senior Secondary School Jagadhri. My date of birth is

22.12.2006. We are two brothers. My elder brother whose name is Rohit is working in a café and my name father is a mason and my mother is a Smt. Ranjana Devi is household woman. I have friendship with Sagar son of Virender Kumar resident of House no. 64 near Kalyan Property Dealer, Agarsain Colony, Kansapur, P.S. Farakpur, mobile no. 8168536516 for the last 5/6 years and Dev Saxena is friend of my friend Sagar. My friend Sagar had told me several days back that Dev Saxena son of Tarun Saxena resident of Guru Teg Bahadur Nagar Chowk Sasoli Majri P.S. Farakpur had sent an SMS to Arjun's aunt's daughter and due to this reason there was exchange of hot words between Arjun son of Kuldeep and Sunny son of Munshi Ram residents of Sasoli and their friend Dev Saxena. On 21.12.2024 also a dispute had arisen amongst them and yesterday on 22.12.2024 it was my birthday and I and my friend Ravi resident of Bank Colony, Yash resident of Bank Colony, Sagar, Vishesh, Sumit, Amit alias Roshan and Abhay residents of Sundar Vihar, Rohit resident of Sasoli, all of them had gathered at around 6 pm at the house of Rakesh r/o Sundar Vihar for my birthday party. During the party, Sagar had received a phone call from Dev Saxena and thereafter Sagar and Sumit regarding the dispute of their friend Dev Saxena had come in front of the house of Sunny in the street for talking to Sunny, Arjun and his friends. After sometime, my friend Sumit called me on phone and asked me to take me from Sasoli. Thereafter I had brought my friend Sumit and Sagar on the motorcycle of my friend Ritesh. After sometime Sagar and Sumit brought their friend Ravi and Vishesh and called some other friends also on phone whose names I do not know. All of them had gone to Sasoli for creating dispute with Sunny and his friends. Thereafter I and my friend Vishesh went to see them in front of the house of Sunny and after going ahead a little, we saw Dev Saxena, Sumit and Sagar as also Sunny and Arjun and his friends fighting amongst themselves. They were attacking each other with bricks and pebbles and were abusing and threatening each other to kill them. Seeing escalation of the fight I and my friend Vishesh tried to run away on our motorcycle, suddenly someone fired 2/3 times out of which one bullet hit my left thigh. My friend Vishesh was bringing me back from there, in the way my father's friend Satya s/o Ramsevak r/o Sundar Vihar met me who took me to Civil Hospital Yamuna Nagar on motorcycle for treatment where my treatment is going on. Today, the doctor conducted the operation and took out the bullet. Arjun s/o Kuldeep Singh and Sunny so Munshi Ram r/o Sasoli and several other boys were present at the spot, it is possible that someone out of them had fired with the intention to kill. In this regard, investigation be conducted and legal action may kindly be taken. I have got recorded my statement in Civil Hospital which I have read and is correct. Sd/- Rohan. Police proceedings:- Yesterday n 22.12.2024 at around 11pm an information was received by myself S.I./SHO on official mobile that injured Rohan

s/o Jagan r/o Sundar Vihar colony P.S. Farakpur was admitted in Civil Hospital Yamuna Nagar due to bullet injury. On this information I S.I/SHO along with P/SI Randeep Singh, HC Sandeep Kumar no. 16 HC Anil Kumar no. 84 on official vehicle no. HRO2GV2575 being driven by Mangat Rai reached Civil Hospital Yamuna Nagar from where the ruqa of Doctor and MR no. GOU/73/KH/MLR/24 dated 22.12.2024 of the injured were obtained and my application was submitted to the doctor for recording the statement of the injured Rohan. The doctor declared the injured Rohan unfit for making the statement and told me that the injured would be operated upon on 23.12.2024 and thereafter taking along Satya s/o Ramsewak r/o Sundar Vihar reached Sasoli road at the place of occurrence and inspected the place of occurrence and search was made for physical evidence at the spot. Today on 23.12.2024 I SI/SHO along with P/SI Randeep Singh, HC Sandeep Kumar no. 16 HC Anil Kumar no. 84 on official vehicle no. HR02GV2575 being driven by Mangat Rai reached Civil Hospital Yamuna Nagar from where an application was given to the doctor for opinion regarding injured Rohan. The doctor declared Rohan fit for making the statement and statement of the injured Rohan was recorded which was read over to him who after considering the same to be correct appended his signatures in english which I verify. In the MLR of the injured Rohan dated 22.12.2024 a gunshot injury is shown on left side of thigh. On the basis MR and the statement offences under section 109(1), 191(3), 190, 115(2), 351(3) BNS 25-54-59 Arms Act are made out and writing was being sent through HC Anil Kumar no.84 to the police station for lodging FIR and FIR no. be informed after registration and special reports of the case be sent to the higher officers. I SI/SHO along with officials go to the place of occurrence. Today Civil Hospital Yamunagar sd. Janakraj SI/SHO PS Farakpur dated 23.12.2024 time 03.30 pm.”

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and has committed no offence. It is further submitted that the co-accused, Arun, was arrested on 25.12.2024, and in his disclosure statement, he allegedly implicated the petitioner, claiming that the petitioner possessed a country-made pistol and had opened fire. On behalf of the petitioner, it is contended that the petitioner and the complainant are real cousins, and given their familial relationship, there was no animosity between them.

Therefore, there is no plausible reason for the petitioner to have attacked the complainant.

On behalf of the State/complainant

The learned State counsel, appearing on advance notice, on instruction prays for the dismissal of the present petition on the ground that the allegations against the petitioner are of a serious nature, as the fire arm was used by the petitioner and his gunshot had hit the thigh of the complainant. He further submits that the recovery of pistol is yet to be effected from the petitioner, therefore, his custodial interrogation is required.

4. Analysis

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

According to the case of the prosecution, the name of the petitioner has come up based on the disclosure statement made by the accused, Arun. As per the statement, it has been revealed that, at the time of the incident, the petitioner was in possession of the illegal country-made pistol used in the offence and that he fired two shots on 22.12.2024, during the dispute at the scene of the occurrence. Furthermore, the recovery of the pistol used in the commission of the offence is in the custody of the petitioner, which is sufficient for this Court to infer that the petitioner has actively participated in the commissioning of offence.

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 482 BNSS, 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 ensconded 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.”

Keeping in view the circumstances of instant case, the role attributed to the petitioner and bearing in mind the law enunciated as discussed hereinabove, this Court is of the view that his custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion, this Court does not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

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.

(SANDEEP MOUDGIL)
JUDGE

16.01.2025

Meenu

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