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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 20.01.2025

Sabir Khan

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Siddarth, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'the BNSS') for grant of pre-arrest/anticipatory bail to the petitioner in case bearing FIR No.321 dated 03.12.2024, registered for the offences punishable under Sections 126, 309(4), 351(2), 3(5) of BNS, 2023 at Police Station Chhachhrauli, District Yamunanagar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“That the complainant Sandeep Kumar has a mobile phone, printing press and money transfer shop at Chhachhrauli road, Bus Stand, Ledi; that on 2.12.2024, after closing his shop at about 8.00 p.m., as usual, he was going to his village Kadkoli on his motor-cycle bearing registration No. HR71D-9315 make HF Deluxe of black/red colour, that he had a bag containing Rs.2,50,000/-, ATM card and keys of the shop in his possession; that at about 8.10 p.m., he reached near field of Harjinder Singh resident of Kadkoli; that in the meanwhile, a swift car of white colour came from behind; that by its side, it hit the said motor-cycle because of which the complainant fell down with his motor-cycle; that the said car had 3-4 people; that two of them alighted therefrom all of a sudden; that they were armed with rods and swiftly started going towards



the complainant; that afraid of, the complainant threw his bag in the fields and started running towards his village to save himself; that the said two persons raised a loud lalkara to kill the complainant; that on seeing them coming towards him, the complainant hid himself in the sugarcane field; that one of them picked up the said bag of the complainant and boarded the car; that the second took the motor-cycle and then they fled towards Bilaspur- Partap Nagar road. On the basis of statement FIR registered.”

3. Learned counsel for the petitioner iterated that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further iterated that the allegations contained in the FIR do not specify any role or overt act attributed to the petitioner. Learned counsel has further submitted that the petitioner has been falsely implicated by the complainant in a fabricated case. Learned counsel asserts that the petitioner is innocent and is in no way connected with the alleged crime. The version presented by the complainant in the FIR is false, frivolous and baseless. It has been argued that the petitioner had approached the learned Additional Sessions Court for grant of anticipatory bail and placed the entire set of facts before it. However, the learned Additional Sessions Court without adequately appreciating the facts and submissions advanced, dismissed the bail application of the petitioner. Furthermore, a bare perusal of the FIR reveals that no specific act or role has been attributed to the petitioner. Moreover there are glaring contradictions in the statements of the complainant/victim recorded before the Police which further demonstrate that the petitioner has been falsely implicated in the present case. It is further submitted that the petitioner shall abide by all the conditions imposed in the event of being granted anticipatory bail. Moreover, the custodial interrogation should not be used as a punitive measure and is justified only when absolutely



necessary for the recovery of material evidence. Furthermore, the petitioner is ready to join the investigation and hence no useful purpose would be served by sending him behind the bars. It is lastly submitted by the learned counsel that the present petition be allowed and the petitioner be granted the concession of the anticipatory bail.

4. I have heard the learned counsel for the petitioner and have gone through the available record of the case.

5. It would be apposite to refer herein to a judgment of the Hon’ble Supreme Court titled as **Kishor Vishwasrao Patil vs. Deepak Yashwant Patil and another** passed in **SLP(Crl) No.1125-2022**, relevant whereof reads as under:

“74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

*75. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933]** , it was held as under : (SCC p. 313, para 19)*

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without



hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

76. In **Siddharam Satlingappa Mhetre v. State of Maharashtra** [**Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514**], the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

77. After referring to **Siddharam Satlingappa Mhetre** [**Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514**] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh v. State of Bihar** [**Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468**], the Supreme Court held as under : (SCC p. 386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. 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. (See **D.K. Ganesh Babu v. P.T. Manokaran** [**D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345**], **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain** [**State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC**



213 : (2008) 1 SCC (Cri) 176] and Union of India v. Padam Narain Aggarwal [Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1].)”

Economic offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510], it was held that in economic offences, the accused is not entitled to anticipatory bail.”

15. In Sushila Agrawal and others v. State (NCT of Delhi) and Another reported in (2020) 5 SCC 1, Constitution Bench of this Court held that while considering an application for grant of pre-arrest bail the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence or likelihood of fleeing justice. The Court held:-

“92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

6. As per the case put forth in the FIR in question, indubitably, serious allegations have been levelled against the petitioner. The FIR *ibid* was lodged on a statement made by the complainant namely Sandeep Kumar, who alleged that he operates a mobile phone shop, printing press and money transfer service at Chhachhrauli Road, Bus Stand, Ledi. On 02.12.2024, after closing his shop around 08:00 p.m., the complainant was going to his village Kadkoli on his motor-cycle. He was carrying a bag containing Rs.2,50,000/-, an ATM card and shop keys. It was alleged that at

approximately 08:10 p.m., near the fields of Harjinder Singh in Kadkoli, a



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white Swift car approached from behind and deliberately hit the motor cycle of the complainant, causing him to fall. The car reportedly had 3/4 occupants, two of whom immediately alighted, armed with rods and began advancing towards the complainant. Fearing for his safety, the complainant threw his bag into the fields and ran towards his village. The two assailants allegedly threatened to kill the complainant which prompted him to hide in a nearby sugarcane field. Subsequently, one of the accused took the bag of the complainant while the other seized his motor-cycle. They then fled in the car towards Bilaspur-Partap Nagar road. During the course of investigation, co-accused namely Ashik was arrested on 11.12.2024. Upon interrogation, he disclosed the alleged involvement of the petitioner as an accomplice in the commission of the offence, asserting that the crime was committed in furtherance of a criminal conspiracy. Based on his disclosure, the stolen motor-cycle and Rs.5,000/- were recovered. Furthermore, co-accused namely Rijwan was also arrested in a separate case (i.e. FIR No.347 of 2024 under Sections 61(2) and 309(4) of the BNS Act, registered at Police Station Chhachhrauli). During his interrogation, he implicated a third accused namely Shahjan, in the instant case. Consequently, the co-accused Shahjan was arrested on 04.01.2025. Upon his interrogation, co-accused Shahjan further implicated the petitioner, alleging his participation in the commission of the crime. In consequence of his disclosure, Rs.22,000/- purportedly stolen from the complainant were also recovered.

6.1. It appears that the remaining amount from the alleged robbery, alongwith the ATM card of the complainant, shop keys and the bag containing the stolen money are yet to be recovered from the petitioner. No



cause *may* plausible cause has been shown, at this stage, from which it can be deciphered that the petitioner has been falsely implicated into the present FIR. It goes without saying that in the instant case, three co-accused in the instant FIR are already in custody, while the petitioner remains at large. The manner in which the incident occurred, as described in the FIR, clearly reflects the involvement and conduct of the petitioner and his co-accused and hence, disentitling him for the grant of anticipatory bail.

7. It is befitting to mention here that while considering a plea for grant of anticipatory bail, the Court has to equilibrate between safeguarding individual rights and protecting societal interest(s). The Court ought to reckon with the magnitude and nature of the offence; the role attributed to the accused; the need for fair and free investigation as also the deeper and wide impact of such alleged iniquities on the society. It is imperative that every person in the Society can expect an atmosphere free from foreboding & fear of any transgression. At this stage, there is no material on record to hold that *prima facie* case is not made out against the petitioner. The material which has come on record and preliminary investigation, appear to have established a reasonable basis for the involvement of the petitioner in the alleged crime. Thus, it is not appropriate to grant anticipatory bail to the petitioner, as it would necessarily cause impediment in effective investigation. In ***State v. Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039]***, the Supreme Court held as under : (SCC p. 189, para 6)

“6. We find force in the submission of 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 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.”

8. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail in the factual matrix of the case in hand. Moreover, given the gravity of the allegations against the petitioner, the custodial interrogation of the petitioner is necessary for an effective investigation & to unravel the truth. The petition is, thus, devoid of merits and is hereby dismissed.
9. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.
10. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 20, 2025
Ajay

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