

Neutral Citation No. 2025:PHHC:047815

105 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CRM-M-19243-2025
DECIDED ON: 07.04.2025

SURENDER @ SETHI

... PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Amit Choudhary, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Relief Sought:-

The jurisdiction of this Court under Section 482 BNSS,2023 has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 973, dated 22.11.2024, under Sections 103(1), 115, 190, 191 (3) and 61(2) BNS, registered at Police Station Sadar Hisar, District Hisar.

2. Facts

The brief facts of the case are that on 22.11.2024, a ruqqa regarding death of Ramesh son of Abhey Ram from Jindal Hospital, Hisar was received in the Police Station Sadar, Hisar, upon which Sub Inspector Dalel reached Jindal Hospital, Hisar. In the Jindal Hospital, Hisar, complainant Anoop son of Rakesh Kumar resident of village Satrod Kalan made a statement before Sub Inspector Dalel to the effect that on 21.11.2024 at about 5-00 P.M., he alongwith his father on motor cycle No. HR16G-0175 was returning to their

house from fields and when they reached near the fields of Sandeep son of Wazir, then two vehicles, one Sakoda bearing registration No. HR51BD-3383 and one of white colour came from behind. About 14-15 persons were sitting in both the aforesaid vehicles. Anil son of Chander, Sunil son of Chander, Deepak son of Surender alongwith other persons were sitting in the Sakoda vehicle and Anil was driving the Sakoda vehicle. The accused persons directly hit the Sakoda vehicle into his motor cycle, due to which he (complainant) and his father Rakesh fell down and sustained multiple serious injuries. Complainant further alleged that the accused persons also caused injuries to them with iron rod and dandas. Complainant further alleged that he shifted his father Rakesh to Jindal Hospital, Hisar for treatment and during treatment, his father died due to the injuries. Complainant further alleged that earlier on 30.11.2023 accused persons caused injuries to his elder brother Sudhir, regarding which they registered a criminal case against the accused persons. On 15.07.2024 also accused persons attacked upon them. On the basis of aforesaid statement of the complainant, initially case under section 115(2), 190, 191(3) and 103(2) BNS was registered. That on 25.11.2024, supplementary statement of the complainant was recorded. On 26.11.2024, co-accused Anil, Sunil and Dinesh were arrested and during interrogation they suffered their separate disclosure statements to the effect that they after hatching criminal conspiracy committed the crime. Thereafter, Section 61 BNS was added. During further investigation, sections 115(2) and 103(2) BNS were deleted and section 103(1) and 115 BNS were added. On 29.11.2024, coaccused Deepak alias Mota, Rakesh alias Patwari were arrested. On 06.12,2024, co-accused Sushil alias Sheel and Ravi

Khan were arrested. On 06.12.2024 co-accused Sushil @ Sheel and Ravi Khans on of Raju were arrested.

3. **Submissions**

On behalf of the petitioner:

Learned counsel for the petitioner has contended that there is delay in registration of present FIR, as the alleged incident took place on 21.11.2024 and the present FIR was registered on 22.11.2024. He further contends that neither the petitioner has been named in the FIR nor any specific role has been attributed to him. Moreover, the name of the petitioner has been surfaced in the supplementary statement of the complainant, which was recorded after a span of 4 days after the alleged incident. The petitioner is ready and willing to join the investigation and will co-operate with the investigating agency.

Notice of motion.

On behalf of respondent-State

At the asking of Court, Mr. Chetan Sharma, DAG, Haryana appearing on advance notice, accepts the same on behalf of respondent-State. He submits that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. He prays for dismissal of the present petition, submitting that as per the FIR the petitioner, along with his co-accused, initially struck the motorcycle, on which the complainant and his father were riding, with a Sakoda car. As a result of the collision, the complainant and his father fell from the motorcycle. Subsequently, the all the accused persons, including the present petitioner, allegedly assaulted the complainant and his father using an iron rod and a *danda* (wooden stick). It is further submitted that the name of

the petitioner surfaced in the supplementary statements of both the injured person, Anoop, and the eyewitness, Sudhir, wherein it was stated that the petitioner, along with the other accused, was present at the scene and inflicted injuries on the complainant and his father. Furthermore, it is submitted that, apart from the present case, the petitioner is also involved in two other cases of similar nature, meaning thereby, he is a habitual offender.

Heard learned counsel for the respective parties.

4. **Analysis and conclusion:**

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.

Prima facie, the allegations against the petitioner are both serious and specific. In their supplementary statements recorded before the police, the complainant-injured Anoop and the eyewitness Sudhir have explicitly named the petitioner, stating that he, along with the other co-accused, arrived at the scene and actively participated in the commission of the offence by causing injuries to Ramesh, the father of the complainant.

According to the prosecution, the petitioner was also in regular contact with the main accused, Dinesh, even prior to the incident. This further strengthens the case against the petitioner.

Given the gravity of the allegations, and considering that the recovery of the weapon used in the offence is still pending, the custodial

interrogation of the petitioner is essential for ensuring a thorough and effective investigation.

The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

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, 2023, 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.”

In light of the gravity of the offences, the *modus operandi* adopted, this Court does not deem it fit to extend the extraordinary concession of anticipatory bail to the petitioner. The instant petition stand dismissed accordingly.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case

07.04.2025
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(SANDEEP MOUDGIL)
JUDGE

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