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

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Date of decision: 14.01.2025

Jitender

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rajnish K. Gupta, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG Haryana.

Mr. Imtiyaz Hussain, Advocate for the complainant.

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.348 dated 20.10.2024, registered for the offences punishable under Sections 115(2), 117(2), 118(1)(2), 190, 191(3), 351(2)(3), 109(1) of BNS Act, at Police Station Gadpuri, District Palwal, Haryana.

2. The gravamen of the FIR in question reflects that the criminal proceedings were initiated based on a complaint dated 20.10.2024 filed by Kuldeep, son of Trilok Chand, a resident of Village Janoli, District Palwar. In his complainant, he alleged that on 19.10.2024, at around 11:15 p.m., his younger brother namely Anil was sitting at a nearby Chaupal when accused Jitender, son of Mauji Ram, arrived and began abusing his brother without any reason. When his brother namely Anil objected, then accused Jitender, in a pre-planned conspiracy, called upon his family members namely Ashish, Samay Singh, Kunal (Sagar), Vishnu, Ankur, Lokesh, Sukhi Ram, Sharda

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and Amar Singh, who all were armed with weapons like axes, iron rods and piles. Thereafter, they attacked his brother namely Anil and when he raised an alarm, father of the complainant namely Trilok Chand, brothers of the complainant namely Prahlad, Ravinder, and the complainant himself rushed to his aid. All the assailants then attacked the complainant's side with the intent to kill and caused severe injuries. The finger of the father of the complainant was severed and his ribs were fractured whereas the brothers of the complainant namely Anil and Prahlad sustained serious injuries, with Prahlad currently unconscious at Safdarjung Hospital, Delhi. However, the other brother of the complainant brother namely Anil is admitted to Badshah Khan Hospital, Faridabad and the father of the complainant is under treatment at ESI Hospital, Faridabad. The complainant and his brother namely Ravinder also sustained multiple injuries in the occurrence. Furthermore, it was alleged that all the aforesaid accused even chased and attacked the vehicle of the complainant side while they were taking the injured for treatment and broke the rear glass of the vehicle. It was further alleged that this attack was a result of a premeditated conspiracy and old enmity. On these set of allegations, initially, instant FIR under Sections 190, 191(3), 115(2), 118(1), 351(2), (3) of the BNS, 2023 was registered against the accused. Thereafter, during the course of investigation and on receiving the opinion of the doctor, Sections 117(2), 118(2) and 109 of BNS, 2023 were added.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further iterated that the Sessions Court, while declining the anticipatory bail

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plea of the petitioner, has failed to appreciate that the complainant party was, in fact, the aggressor in the instant case. According to learned counsel, it is evident from the circumstances that brother of the complainant namely Prahlad first went to the shop of Sukhi Ramand Sharda (one of the accused) and used vulgar and abusive language. Thereafter, he called his family members, who has arrived with deadly weapons such as axes and iron rods & inflicted multiple sharp and grievous injuries upon the petitioner's side. In the ensuing scuffle, the complainant party also sustained injuries which clearly present a case of version and cross-version. However, on account of the political influence, no FIR has been registered against the complainant party till date, reflecting bias in the investigation process. Furthermore, the petitioner and the co-accused were already granted police bail and have cooperated fully with the investigation. Learned counsel submits that petitioner had joined the investigation on 24.10.2024 and there is nothing further to recover or interrogate from him. Learned counsel asserts that the petitioner has a clean antecedent with no prior accusations. Learned counsel has submitted that as per the settled principles, if crucial facts are omitted in the FIR and subsequently added through Section 180 of BNSS, 2023 (earlier Section 161 of Cr.P.C., 1973) statements, it indicates afterthought and mala fide intent. Learned counsel asserts that the in the instant case, the FIR fails to include material facts regarding the conduct of the complainant party which further raised questions about its credibility and fairness. Furthermore, once the police bail has been granted to the petitioner, the necessity for further custodial interrogation becomes unwarranted and arbitrary. It is next submitted by the learned counsel that no recovery is to be



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effected from the petitioner or at his instance. 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. *Per contra*, learned State counsel has opposed the grant of anticipatory bail to the petitioner by arguing that the offence committed by the petitioner is serious in nature. According to learned State counsel, in case the petitioner is granted the concession of pre-arrest bail, there is every likelihood that the petitioner may influence the witnesses or may commit similar offence and/or will flee from the trial. Learned State counsel has iterated, which has invoked the offence of Section 109 of BNS, 2023 (earlier Section 307 of IPC) is attributed to the petitioner since the petitioner has given axe blow upon the ribs of the injured in question.

5. Learned counsel for the complainant has vociferously opposed the grant of anticipatory bail to the petitioner by raising submission in tandem with the learned State counsel.

6. I have heard the learned counsel for the rival parties and have gone through the available record of the case.

7. 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.

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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 enroped 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.”

8. 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 Kuldeep, who alleged that on 19.10.2024 at about 11:15 PM, he alongwith his younger brother Anil was sitting at Chaupal. At that time, the accused Jitender (petitioner herein) without any provocation and in conspiracy started abusing the brother of the complainant namely Anil. When Anil objected, accused Jitender (petitioner herein) escalated the abuse and called his family members who arrived armed with axes, iron rods and pipes. Together they attacked the brother of the complainant. Upon hearing the commotion, the complainant and his family rushed to help but were also attacked. Furthermore, the accused inflicted serious injuries on the complainant's father and brothers. The fingers of the father of the complainant were severed and his ribs were fractured whereas the brothers of the complainant sustained head injuries. The injury which has invoked the offence under Section 109 of BNS, 2023 (earlier Section 307 of IPC) is attributed to the petitioner. No cause *nay* 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. The medical record, as available presently, seems to be corroborating the prosecution/complainant version that the petitioner



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(herein) has caused the injury which has invoked Section 307 of IPC. It goes without saying that in the instant case, the complainant has categorically stated that the petitioner along with co-accused and as part of an unlawful assembly, acted in furtherance of their common object to inflict multiple injuries upon the complainant party.

9. 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. It is alleged that one of the injuries, as corroborated by the medical evidence, has been declared as “dangerous to life” and was inflicted on the ribs, a vital part of the human body. The medical records substantiate the nature and extent of the injuries sustained by the complainant party. The material which has come on record, including the medical evidence and preliminary investigation, appear to be established a reasonable basis for the accusations. 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.”

9.1. 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, 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.

10. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the case/investigation.

11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 14, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No