

***Before Aman Chaudhary, J.***

**TARUN—Petitioner**

*versus*

**STATE OF HARYANA—Respondent**

**CRM-M No. 37714 of 2022**

August 25, 2022

***Code of Criminal Procedure, 1973—Section 438—Indian Penal Code, 1860—Ss. 342, 365, 395, 412—Arms Act, 1959—S.25—Petition under S. 438 Cr.P.C. for grant of pre-arrest bail—held allegations made in FIR are grave in nature—Petitioner managing to evade arrest for more than 2<sup>1/2</sup> years shows possibility of fleeing—P.O. proceedings initiated against petitioner—seeking parity with co-accused on grant of bail misconceived as co-accused granted bail under S. 439 primarily on ground of custody—Petition dismissed.***

*Held*, that allegations made in the FIR are grave in nature, considering the place of the incident being highway, the manner in which the offences have been committed by use of pistol and thereafter, blind folding the complainant and driving him to an undisclosed location, where he was kept confined and later dumped on the road, after threatening him with his life. The fact that the petitioner is managing to evade his arrest since January, 2020 i.e. for more than 2 ½ years, shows that there is all possibility of him fleeing from justice, in the eventuality of grant of anticipatory bail. Furthermore, as stated by the learned State counsel, P.O. proceedings have been initiated against the petitioner. The reliance of the learned counsel for the petitioner on grant of bail to the co-accused and seeking parity thereon is misconceived, inasmuch as the co-accused had been granted bail under Section 439 Cr.P.C., primarily on the ground of custody.

(Para 7)

*Further held*, that serious offences have been alleged in the present case, for which imprisonment for life or a term of rigorous imprisonment of 10 years can be imposed. The manner as has been alleged in which the offence has been committed speaks volumes of the dare devilness of the accused, having committed the crime on national highway. Such offences are on the rise in the present times and require a strong hand to be curbed.

(Para 8)

*Further held*, that in view of the gravity of offence and while taking into consideration the factors for grant of anticipatory bail as held by Hon'ble the Supreme Court of India in the case of **Jai Parkash Singh** (*supra*), this Court is not inclined to grant concession of anticipatory bail to the petitioner.

(Para 9)

Afjal Hussain, Advocate, *for the petitioner*.

Gaurav Bansal, A.A.G., Haryana.

### **AMAN CHAUDHARY, J. (Oral)**

(1) It is the 2<sup>nd</sup> petition filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case FIR No.15, dated 25.01.2020, under Sections 395, 397, 342, 365, 412 of the Indian Penal Code and Section 25 of the Arms Act, 1959, registered at Police Station Manesar, District Gurugram.

(2) Brief facts of the case as per the FIR appended to this petition as Annexure P-1, are that the incident in question took place in the intervening night of 22-23.01.2020 near a flyover opposite KFC on NH-8, when a white colour car came from behind. The accused brought their car in front the vehicle of the complainant. There were 5-6 persons in the said car. Out of these, three persons boarded the vehicle of the complainant from the driver side and one person from the conductor side. One of the person amongst them pointed a pistol at the chest of the complainant and pushed him to the rear seat and others sat upon him and started beating him and snatched about Rs.7,000/- and mobile phone. One of the person drove the vehicle of the complainant on the service road ahead of the flyover and after parking the same, the complainant was blindfolded and two persons put him on the rear seat of the car being driven by one person and sat over him and one of the them pointed a pistol at him. After driving the vehicle for three hours, he was locked in a room. On 23.01.2022 at about 9 p.m., they blindfolded him and put him in the car and at about 10 p.m., he was finally left on the Ferozepur Zhirka road and they threatened him and told him to go to his village Jammu and in case he goes to the police, they will shoot him.

(3) Learned counsel for the petitioner submits that he was not named in the FIR and he has been nominated only on account of the disclosure statement of a co-accused and nothing is to be recovered from him. He further submits that his co-accused have been granted

regular bail by this Court.

(4) Learned State counsel vehemently opposes the grant of anticipatory bail to the petitioner on the ground that it is a serious offence and recovery is to be effected. He further submits that the FIR in question is dated 25.1.2020 and the name of the petitioner surfaced in this case on 6.2.2020 when he was nominated by his co-accused, however, since then, the petitioner has evaded his arrest. He further submits that out of eight, five accused have been arrested and against the remaining accused including the present petitioner, P.O. proceedings have been initiated.

(5) Heard learned counsel for the parties.

(6) The Hon'ble Supreme Court in *Jai Parkash Singh versus State of Bihar*<sup>1</sup> has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under: “438. Direction for grant of bail to person apprehending arrest.-(1) Where 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 that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-

(i) The nature and gravity of the accusation;

(ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

---

<sup>1</sup> (2012) 4 SCC 379

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

xxx xxx xxx

13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

xxx xxx xxx

21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required .”

(7) The allegations made in the FIR are grave in nature, considering the place of the incident being highway, the manner in which the offences have been committed by use of pistol and thereafter, blindfolding the complainant and driving him to an undisclosed location, where he was kept confined and later dumped on the road, after threatening him with his life. The fact that the petitioner is managing to evade his arrest since January, 2020 i.e. for more than 2 ½ years, shows that there is all possibility of him fleeing from justice, in the eventuality of grant of anticipatory bail. Furthermore, as stated by the learned State counsel, P.O. proceedings have been initiated

against the petitioner. The reliance of the learned counsel for the petitioner on grant of bail to the co-accused and seeking parity thereon is misconceived, inasmuch as the co-accused had been granted bail under Section 439 Cr.P.C., primarily on the ground of custody.

(8) Serious offences have been alleged in the present case, for which imprisonment for life or a term of rigorous imprisonment of 10 years can be imposed. The manner as has been alleged in which the offence has been committed speaks volumes of the dare devilness of the accused, having committed the crime on national highway. Such offences are on the rise in the present times and require a strong hand to be curbed.

(9) In view of the gravity of offence and while taking into consideration the factors for grant of anticipatory bail as held by Hon'ble the Supreme Court of India in the case of **Jai Parkash Singh** (*supra*), this Court is not inclined to grant concession of anticipatory bail to the petitioner.

(10) Accordingly, the present petition stands dismissed.

---

*Divya Gurnay*