

**IN THE COURT OF RAVI GULATI
ADDITIONAL SESSIONS JUDGE, GURDASPUR**

CIS No. BA-106-2024
CNR No. PBGD01-000215-2024
Date of Decision 12.01.2024

PBGD010002152024



Birbal @ Rinka son of Bachan Lal resident of village Jhabkra, P.S.
Behampur, Tehsil Dinanagar, District Gurdaspur.

.....Accused/Applicant.

Versus

State of Punjab.

.....Respondent.

**FIR No.69 dated 26.10.2023
Under Sections 435/427/452/148/149 of IPC
Police Station Behrampur**

First Bail application under Section 438 Cr.P.C.

Present: Ms. Pawanpreet Kaur Bajwa Advocate for accused/applicant
Sh. Aman Sharma APP for the State.

ORDER

Present bail application has been filed by
accused/applicant Birbal @ Rinka son of Bachan Lal seeking
anticipatory bail under section 438 of Cr.P.C. Accused/applicant
Birbal @ Rinka has also placed on record his affidavit that this is his
first bail application under section 438 Cr.P.C. Ahlmad of this court
has also made his report that no other bail application of the
accused/applicant is pending before any court or decided by any
other court in this FIR.

2. Upon notice, learned APP for the State has put in appearance on behalf of State and contested the bail application. Police record has also been summoned and perused. ASI Hansa Singh No.819/Gsp P.S. Behrampur appeared along with record and suffered statement that no other bail application of the accused/applicant is pending in any court or decided by any court in this FIR and except the offences mentioned in present FIR, no offence has been added and deleted in present FIR.

3. Learned counsel for the applicant submitted that accused/applicant is innocent and has been falsely implicated in present case. He argued that accused/applicant was not present at the time of alleged occurrence but his name was wrongly mentioned by the complainant. He further argued that there is delay of one day in registration of the FIR and some of his co-accused have been granted regular bail. He also submitted that however accused/applicant is ready to join the investigation and to cooperate in the same. Therefore, he prayed that he be granted concession of pre-arrest bail.

4. On the other hand, learned APP for the State argued that in view of the allegations against the accused/applicant, he is not entitled to pre-arrest bail. He further submitted that this court has also declined anticipatory bail of his co-accused. Thus, he prayed for dismissal of the present bail application.

5. After hearing both the sides and after going through the record, it comes out that present FIR has been registered on 26.10.2023 on the statement of complainant Vikas Kumar against the present accused/applicant and 12 other persons by name and three unknown persons on the allegations that in the intervening night of 24/25.10.2023, he heard loud noise outside of his house and when he went out, he saw that various persons including the present accused/applicant were standing there who had put his XUV vehicle on fire. Thereafter they all entered inside his house and started breaking his household articles and also put his belongings on fire. Thereafter they went to the house of Kaki son of Surinder and also damaged her household articles and moped. After that they went to the house of Kamaljit wife of Banarsi Dass and damaged her belongings and one motorcycle by using dattars. The contents of the FIR further reveals that the delay in registration of the FIR is also explained and on 26.10.2023, one application regarding the aforesaid incident was also received at the police station but after verifying the video recording, the present FIR was registered.

6. In the backdrop of these facts, this court finds that allegations against the accused/applicant are serious in nature. The lawlessness on his part does not entitle him to seek concession of pre-arrest bail as he not only barged into the house of the complainant along with his co-accused forming the unlawful

assembly but also put his belongings and articles on fire. He was part of the mob which did not stop there but thereafter they also entered in the houses of other persons as mentioned in the FIR and also damaged their belongings and household articles. As per the FIR, even the said incident was also captured by making a video. The aforesaid incident must have created atmosphere of fear and panic in the mind of complainant and other persons due to the alleged act and conduct on the part of the co-accused and his companions and granting pre-arrest bail to the accused/applicant would definitely give wrong signal to the society at large. The accused/applicant cannot seek parity with his co-accused who have been granted regular bail. Role of the present accused/applicant is required to be probed thoroughly and this court is of the considered opinion that the relief of anticipatory bail to the accused is not warranted at this stage because if granted the same, there is every likelihood that the accused may hamper or interfere in the investigation and may not cooperate in the same because a person under pre-arrest bail may not disclose all the relevant facts under questioning due to the safeguard provided to him while granting anticipatory bail. The Hon'ble Supreme Court of India in one of its recent judgments titled as **Pratibha Manchanda & Anr. Vs. State of Haryana & Anr. 2023(3) RCR (Criminal) 511**, has observed that *relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to*

prevent the misuse the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

Therefore, considering the seriousness and gravity of the offence, this court is of the opinion that the accused/applicant is not entitled to concession of pre-arrest bail and his custodial interrogation would be required to effect arrest of other accused and recovery of the weapons used by them. Therefore, the present application is hereby dismissed. However observations made herein shall have no effect on the merits of the main case. Police record be returned. Record of bail application be consigned to the record room.

Pronounced
Dated:12.01.2024.
Shiv Kumar, Stenographer-I

(Ravi Gulati)
Additional Sessions Judge,
Gurdaspur (UID No.PB0242)