

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

CIS No. BA-3807-2024
CNR No. PBGD010089812024
Date of Order: 20.11.2024

PBGD010089812024



Shiv @ Vicky (aged 36 years) son of Vijay Kumar, resident of H. No.97,
Valmiki Mohalla, Kapoori Gate, Tehsil Batala, District Gurdaspur, Aadhar
Card No.5004 5940 1283.

.....Accused/Applicant.

Versus

State of Punjab.

.....Respondent.

FIR No.43 dated 28.05.2024

Under Sections 323/324/326/452/506/148/149 IPC

Police Station City Batala District Gurdaspur.

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

Present:Sh. Karambir Singh Kahlon Advocate for accused/applicant.
Sh. Jatinder Pal Singh learned APP for State.

ORDER

Present bail application has been filed by
accused/applicant Shiv @ Vicky son of Vijay Kumar seeking
anticipatory bail under section 438 of Cr.P.C. He also placed on
record his affidavit that this is his first bail application filed u/s 438
Cr.P.C. Ahlmad of this court has also reported that no other bail

application of the accused/applicant is pending or decided by any other court in this FIR.

2. Upon notice, learned APP for the State put in appearance on behalf of State and contested the bail application. Police record has also been summoned and perused. ASI Jaspal Singh No.2611/BTL, P.S. City Batala appeared along with record and has submitted statement that no other bail application of the accused/applicant is pending in any court nor decided by any court and offence under section 326/201 IPC were added in this FIR.

3. Learned counsel for the applicant submitted that accused/applicant is innocent and has been falsely implicated in present case and false allegations have been levelled against him that he had caused injuries to Amar Khosla. He argued that in fact complainant party had caused injuries to the accused persons but police failed to register a cross case. He further submitted that later on Sunny Khosla, Amar Khosla, Raman and Sonu also murdered Saurav Khosla regarding which FIR No.91 dated 19.08.2024 was also registered at P.S. City Batala. He further submitted that so far as this FIR is concerned, custodial interrogation of accused/applicant is not required and for the sake of investigation, he is ready to join the investigation and to cooperate in the same. Therefore, he prayed that accused/applicant be granted concession of pre-arrest bail while submitting that since FIR was registered qua sections under IPC, he

has filed the present bail application under section 438 of Cr.P.C instead of section 482 of BNSS.

4. On the other hand, learned APP for the State opposed the bail application on the grounds that allegations against the accused/applicant are serious in nature as he being member of unlawful assembly inflicted grievous injuries to the complainant. Therefore, he prayed for dismissal of the present bail application. He also submitted that this court has already dismissed anticipatory bail applications of other accused in this FIR.

5. After hearing both the sides and after going through the record, it comes out that present FIR has been registered on the statement of complainant Amar Khosla against the present accused/applicant and other accused on the allegations that on 27.05.2024 at about 11:00 PM, he was present in his house along with his family members. He heard noise outside his house as some body was calling him. When he went outside and opened the door, he saw that accused Babita wife of Vijay Kumar alongwith accused Avikash son of Vijay Kumar, accused/applicant Shiv son of Vijay Kumar, accused Ali son of Raju, accused Danish son of Vijay Kumar all armed with dattars, accused Ghulla armed with Sota and two unknown persons were standing there. Thereafter Babita raised lalkara to teach him a lesson for raising dispute with them earlier upon which all the accused forcibly entered inside his house. As per

the allegations, accused Avikash, Ali and accused/applicant Shiv @ Vicky gave dattar blows on head of the complainant. Thereafter accused Danish gave dattar blow on left side of his head near ear and Ghulla gave blow of his weapon on his neck and unknown persons accompanying them also gave dattar blows near his right ear and Babita also hit him with Sota on his shoulder. Thereafter Avikash gave another dattar blow on his waist on the right side and accused/applicant Shiv gave dattar blow on his right thigh and Danish gave dattar blow on his right knee. After that Avikash gave another dattar blow on his right leg and Ali gave another blow of dattar on his left knee. He raised alarm upon which his mother came out to save him but Avikash gave dattar blow to his mother and caused injury on finger of her right hand. Thereafter all the accused ran away from the spot.

6. As per the police and MLR, complainant Amar Khosla received 14 injuries out of which 10 injuries have been caused by sharp weapons whereas four injuries suffered by him are caused by blunt weapons. The present accused/applicant has been attributed specific injury and as per the allegations, he gave dattar blow on the head of Amar Khosla as well as on his right thigh. Therefore in view of the aforesaid circumstances and the specific allegations against the accused/applicant which are grave and serious in nature, this court is of the opinion that he is not entitled to concession of pre-arrest bail as

his custodial interrogation would be required to carry out effective investigation and to effect recovery of the weapons of offence. It is also not disputed that this court has already dismissed anticipatory bail filed by other co-accused. Thus, this court is of the considered opinion that the relief of anticipatory bail to the present accused/applicant is also not warranted at this stage because if granted the same, there is every likelihood that he 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.

7. Therefore, considering the seriousness and gravity of the offence and the manner in which the complainant received as many as 14 injuries, 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 and to carry out effective investigation. Hence, 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. Bail application file be consigned to the record room.

Pronounced
Dated:20.11.2024.
Shiv Kumar, Stenographer-I

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