

**In the Court of Sh. Virinder Aggarwal,
Sessions Judge, Ferozepur.
(Unique Identification No.PB0045)**

CNR No. PBFZ0100-4525-2023
CIS No. BA-1699 of 2023
Case No. 406 of 05.07.2023
Date of Order: 14.07.2023

Gursahib Singh @ Sahib Singh @ Sabha aged 40 years son of Nishan Singh, resident of Village Sudhara, PS Mallanwala, Post Office Mallu Walie Wala, District Ferozepur.

... Applicant/Accused

Versus

State of Punjab.

...Respondent.

Application for bail U/s 438(i) of Code of Criminal Procedure

FIR No. 55 dated 18.06.2021,
Under Sections 307, 506, 148, 149, 120-B of IPC
and 25, 27 of Arms Act,
Police Station Mallanwala.

Present: Sh. A.P.S.Dhanju Advocate, counsel for applicant/accused.
Sh. Dalip Kumar, Public Prosecutor for the State.

O R D E R:-

This order of mine shall decide this application for pre-arrest bail under section 438 of Cr.P.C. filed in the above noted FIR, filed on behalf of applicant, on the allegations that previously FIR was registered under sections 307, 506, 148, 149 of IPC and 25, 27 of Arms

Act. Later on, offence under section 120-B IPC was added by police in the present FIR. Applicant/ accused filed anticipatory bail application, which was allowed by this Court vide order dated 12.04.2023. Now, at the time of presentation of challan, police has added offence under section 120-B IPC. In fact, no offence under section 120-B IPC is made out. Nothing remains to be recovered from the applicant/accused. Hence, it is prayed that the application be allowed and applicant be given the concession of pre-arrest bail.

2. Notice of bail application was issued to State and Sh. Dalip Kumar, Public Prosecutor put in appearance on behalf of State. Record has also been requisitioned.

3. I have heard arguments of counsel for applicant and learned Public Prosecutor for State and have gone through the record.

4. As per the case of prosecution, on 17.06.2021, at about 8 PM, Gurtej Singh alongwith his uncle Balwinder Singh was standing near the gate of his fields. One vehicle *XUV* make *Mahindra* bearing registration No. PB-05-AL-4489 turned towards their house. There are CCTV cameras installed outside and inside his house. Light bulb was on and from the vehicle, Saraj Singh and Jaspal Singh alongwith one unidentified person came out. Two other unidentified persons were also

present in the vehicle and the car driver, after turning the car, parked it backwards. Jaspal Singh asked that they had to compromise the case got registered against him. When complainant told that only his uncle Balwinder Singh knows about the same, Jaspal Singh took out pistol from his waistline and raised *lalkara* that they would be taught a lesson for not entering into compromise. He on seeing the fire arm, he ran inside his house. Jaspal Singh in order to kill him, fired a shot. Balwinder Singh his uncle, who was standing on the upper portion of the *Kothi*, raised alarm "*Mar Ditta Mar Ditta*". At this, the personal Security Guard of his uncle came out alongwith his gun. At this, accused persons ran away. The motive of the occurrence is that on 02.05.2017, Lakha Singh alongwith his companions killed Joginder Singh his father and Harnam Singh his grandfather with bullets and Balwinder Singh has got registered a case against them, which is pending for prosecution evidence and accused are putting pressure upon them to compromise the same.

5. Learned counsel for the applicant/accused argued that applicant/accused is already on bail and his bail order has not been cancelled. He cannot be arrested merely on the ground that offence is enhanced to one under section 120-B IPC.

6. Learned Public Prosecutor for the State argued that since the offence under section 120-B IPC has been added, so custodial interrogation of the applicant/accused is required and as such, anticipatory bail application of the applicant/accused be dismissed.

7. Applicant/accused was granted interim anticipatory bail vide order dated 03.04.2023 for offences under sections 307, 506, 148, 149 of IPC and 25, 27 of Arms Act by this court and the same was confirmed vide order dated 12.04.2023 and now he has moved the present application for pre-arrest bail for offence under section 120-B IPC. Hon'ble Apex Court in **"Pradeep Ram Versus State of Jharkhand & Anr. Criminal Appeal Nos. 816, 817 of 2019, decided on 01.07.2019"** has held that in such circumstances, accused can file an application for his release in additional offences on bail as under:

"It may be true that by mere addition of an offence in a criminal case, in which accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the Court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious

offences have been added to apply for bail in respect of new offences added and the Court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The power under Sections 437(5) and 439(2) are wide powers granted to the court by the Legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and commit him to custody can only be passed by the Court after cancelling the earlier bail”.

8. Considering all the facts and circumstances, anticipatory bail application of applicant/accused is allowed and he be released on bail in the event of his arrest, on his furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. File be consigned to record room.

Pronounced:
Dated: 14.07.2023
Mukesh Kakkar
Executive Assistant

Sd/-(**Virinder Aggarwal**),
Sessions Judge, Ferozpur.
(UID No.PB-0045)