

*Before Rajan Gupta, J.*

**BAJINDER SINGH AND ANOTHER** — *Petitioners*

*versus*

**STATE OF PUNJAB** — *Respondent*

**CRM-M No.13285 of 2015**

July 23, 2015

*Criminal Law—Code of Criminal Procedure, 1973— Pre-arrest bail—S. 438— summoning as additional accused—S. 319— Indian Penal Code 1860—Ss. 302 and 307—Arms Act, 1959—Ss.27, 54 and 59—Court to consider whether additional accused required for purpose of investigation and whether their presence can be secured by issuance of process—When summoned additional accused would have reasonable apprehension of arrest on appearance before the Court — No right accrues to the accused under Section 438 Cr.P.C. to be granted the discretionary relief of anticipatory bail but plea of the additional accused can be considered within available parameters — Anticipatory bail granted.*

*Held*, that there can, thus, be no doubt that the trial court committed no error in summoning the petitioners as additional accused in the instant case as their names figured in the FIR and specific role has been attributed to them. The question, however, remains whether they are entitled to concession of pre-arrest bail. For considering this question, principles laid down in Gurbaksh Singh Sibbia's (supra) need to be recalled. It was held therein that jurisdiction under section 438 Cr.P.C. has to be exercised by wise and careful use of discretion. In case an accused has a reason to believe that he would be arrested for a nonbailable offence, he would be entitled to invoke the provisions of section 438 Cr.P.C. Though no hard and fast rule can be laid down for exercise of this power, it would be taken on facts and circumstances of each case. In the case in hand, since petitioners have been summoned to face trial for offence under section 302 IPC, on their appearance before the court, they have a reasonable apprehension that they would be taken in custody. Thus, plea for anticipatory bail is not misconceived. Article 21 of the Constitution guarantees the right to life and liberty to its citizens. Criminal law derives its source and sustenance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution (see *Vikas Vs. State of Rajasthan's* case (supra) paras 13, 14). Thus, such additional accused

who do not intend to defy law and are ready to face trial, their plea for anticipatory bail can be considered, subject to the principles already laid down in Gurbaksh Singh Sibbia's case (supra). Though Section 438 Cr.P.C. does not confer a right on such accused to be granted discretionary relief of anticipatory bail, their plea would deserve consideration within the available parameter. If appearance of additional accused can be secured and the court is satisfied that they would cooperate during the proceedings, their plea for anticipatory bail can be accepted. It also needs to be emphasized that at the stage of Section 319 Cr.P.C., some deposition of prosecution witness(s) is before the court and on consideration of same additional accused are summoned. However summoning under section 193 Cr.P.C. is only on the basis of material accompanying the report under section 173 Cr.P.C. On perusal of same, additional accused are arraigned. Thus, such accused are entitled to pray for anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.

(Para 7)

Supriya Garg, Advocate *for the petitioner.*

Shilesh Gupta, Addl. Advocate General, Punjab.

Gautam Dutt, Amicus Curiae.

G.S. Nahel, Advocate for the complainant.

### **RAJAN GUPTA, J.**

(1) Petitioners seek pre-arrest bail in a case in which they have been summoned to face trial for offence under sections 302/307 IPC read with section 27/54/59 of the Arms Act, in exercise of powers under section 193 Cr.P.C. According to prosecution, on 28.9.2014 at about 10.00 A.M., Kuljit Singh alongwith certain other persons was going to house of one Neetu in the car. When they reached near the office of Gurpreet Singh alias Dainy, accused came there armed with various weapons. At that time, Gurpreet Singh exhorted that a lesson be taught to Neetu for not repaying the loan to him. He also fired from his .12 bore gun, pellet from which hit chest of Neetu. Thereafter, he again fired a shot at Baljit Singh which pierced his abdomen. He fired two more shots which hit Kuljit Singh and the complainant. Accused thereafter fled from the scene. Motive of the crime is stated to be a money dispute between the parties. Injured were taken to Civil Hospital. Neetu was referred to PGI, Chandigarh where he expired on

30.9.2014. Trial court finding that petitioners had played active role, decided to summon them as additional accused.

(2) It is evident that names of the petitioners figured in the FIR. However, investigating agency exonerated them while submitted its report under section 173 Cr.P.C.

(3) Ms. Supriya Garg, learned counsel for the petitioners has prayed for pre-arrest bail on the ground that petitioners have been summoned merely on the basis of material submitted by the investigating agency along with the final report. Their role was subject matter of investigation but they were found innocent.

(4) Plea has been opposed by counsel representing respondents. During the course of hearing, Mr. Gautam Dutt was appointed as Amicus Curiae to assist the court with regard to the issues involved. Mr. Dutt contended before the court that basic principles for grant of pre-arrest bail remain same as laid down in the case reported as ***Gurbaksh Singh Sibbia etc. versus The State of Punjab***<sup>1</sup>. However, while considering plea of accused who have been summoned as additional accused by the court, it needs to be considered that they are not required for the purpose of investigation and their presence can be secured by issuance of process. In this context he referred to judgment reported as ***Vikas versus State of Rajasthan***<sup>2</sup>.

(5) I have heard learned counsel for the parties and given careful thought to the facts of the case.

(6) In a recent case decided by the apex court reported as ***Dharam Pal versus State of Haryana***<sup>3</sup> it has been held that the court is fully empowered to summon additional accused in exercise of its power under section 193 Cr.P.C. It need not necessarily wait till the trial reaches the stage of section 319 Cr.P.C. This view has been approved by the Supreme Court in ***Hardeep Singh versus State of Punjab***<sup>4</sup> Relevant paras thereof read as under:-

“53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the

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<sup>1</sup> 1980 AIR (SC) 1632

<sup>2</sup> 2013 (4) R.C.R. (CrI.) 948

<sup>3</sup> 2014 (3) S.C.C. 306

<sup>4</sup> (2014) 3 SCC 92

Constitution Bench in *Dharam Pal (CB)*. The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Cr.P.C. is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench and Section 193 Cr.P.C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

**54.** In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.”

(7) There can, thus, be no doubt that the trial court committed no error in summoning the petitioners as additional accused in the instant case as their names figured in the FIR and specific role has been attributed to them. The question, however, remains whether they are entitled to concession of pre-arrest bail. For considering this question, principles laid down in *Gurbaksh Singh Sibbia's (supra)* need to be recalled. It was held therein that jurisdiction under section 438 Cr.P.C. has to be exercised by wise and careful use of discretion. In case an accused has a reason to believe that he would be arrested for a non-bailable offence, he would be entitled to invoke the provisions of

section 438 Cr.P.C. Though no hard and fast rule can be laid down for exercise of this power, it would be taken on facts and circumstances of each case. In the case in hand, since petitioners have been summoned to face trial for offence under section 302 IPC, on their appearance before the court, they have a reasonable apprehension that they would be taken in custody. Thus, plea for anticipatory bail is not misconceived. Article 21 of the Constitution guarantees the right to life and liberty to its citizens. Criminal law derives its source and sustenance from the Constitution. All other laws are supplementary and incidental to the principles laid down in the Constitution (see *Vikas Vs. State of Rajasthan's case* (*supra*) paras 13, 14). Thus, such additional accused who do not intend to defy law and are ready to face trial, their plea for anticipatory bail can be considered, subject to the principles already laid down in *Gurbaksh Singh Sibbia's case* (*supra*). Though Section 438 Cr.P.C. does not confer a right on such accused to be granted discretionary relief of anticipatory bail, their plea would deserve consideration within the available parameters. If appearance of additional accused can be secured and the court is satisfied that they would cooperate during the proceedings, their plea for anticipatory bail can be accepted. It also needs to be emphasized that at the stage of Section 319 Cr.P.C., some deposition of prosecution witness(s) is before the court and on consideration of same additional accused are summoned. However summoning under section 193 Cr.P.C. is only on the basis of material accompanying the report under section 173 Cr.P.C. On perusal of same, additional accused are arraigned. Thus, such accused are entitled to pray for anticipatory bail on the ground that their role was examined by the investigating agency but they were found innocent.

(8) In view of these observations, I allow the present petition. Vide interim order dated 29.5.2015, it was directed that in case petitioners surrender before the concerned court during pendency of this petition, they would be admitted to interim bail. Stand of the State counsel is that petitioners have put in appearance and furnished bail bonds. Prayer for anticipatory bail is, thus, accepted and order dated 29.5.2015 is hereby made absolute, subject to the conditions envisaged by Section 438 (2) Cr.P.C.

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*S. Gupta*