

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-10181 of 2015
Date of decision : May 19, 2015

Karambir and another

...Petitioners...

versus

State of Haryana

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. J.P. Sharma, Advocate for the petitioners.

Mr. Vikramjit Singh, Addl.A.G., Haryana.

JASPAL SINGH, J.

This is a petition under Section 438 of the Code of Criminal Procedure (for brevity, 'Code') preferred by Karambir and Mukesh-petitioners, seeking pre-arrest bail, feeling apprehension of their arrest, in case bearing FIR No. 90, dated 14.02.2015, under Sections 365, 323 and 34 IPC, registered at Police Station City Narnaul, District Mohindergarh (Annexure P-1).

2. Briefly stated, case of prosecution as unfolded by Hari Singh, son of Lala Ram, resident of Mohalla Kailash Nagar, Rewari road, Narnaul is that on February 10, 2015 at about 9:45 p.m., his mother informed him that somebody is calling him at the gate of their house. He opened the gate and accompanied him on his request outside. When he was peeping inside the qualis of green colour, person sitting in the qualis dealt a blow of some weapon on his back.

As a result of which, he fell unconscious. Thereafter, they took him

towards Bachhod side Sihma road where 4/5 young boys sitting in the qualis caused injuries to him and after taking his lenvevo mark mobile dual SIM, he was left by the side of road and when he regained consciousness, he found himself in the area of village Dublana. Through someway or the other, he informed his brother, who reached there in a vehicle and entire episode was narrated to him. He also got subjected to medico legal examination and ultimately, instant FIR was registered.

3. The contention of learned counsel for petitioners is that names of petitioners do not figure in the FIR and they have been nominated as an accused in this case just on the basis of statement of their alleged co-accused-Satish, who was arrested by the police in this case on February 18, 2015. Co-accused Satish has already been granted the concession of bail by the Id. trial court. Statement, if any, suffered by co-accused of petitioners is not admissible against petitioners and in fact, there is no evidence at all showing the participation of either of the petitioners in the commission of alleged offence. They are 19/20 years of age and have nothing to do either with complainant or their alleged co-accused. Otherwise also, they are ready to join the investigation and abide by all the terms and conditions, imposed by the court, in case, they are granted the concession of bail.

4. Instant petition has been hotly resisted by learned State counsel submitting that petitioners have been actively participated in the crime and have been identified by the complainant during the investigation of this case. They accompanied the main accused

Satish in the qualis, kidnapped the complainant, caused injuries to him and thereafter, he was left by the side of the road. Moreover, vehicle has not so far been recovered, which was used in the commission of crime. He accordingly, prayed for dismissal of petition.

5. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has gone through the records available.

6. Undoubtedly, discretion envisaged under Section 438 of the Code is extra-ordinary and is required to be exercised sparingly that too in case where it appears to the Court that either allegations levelled in the FIR are false or groundless. But no such opinion can be expressed, at this stage, in the facts and circumstances of the case in hand.

7. No doubt, names of petitioners did not figure in the FIR, but during investigation of this case, role played by both the petitioners came into light and they were identified by complainant. Not only this, even their names also figured in the disclosure statement suffered by their co-accused, when he was subjected to custodial interrogation. Since, vehicle used in the commission of offence is still to be recovered and other associates of the petitioners are also at large, this Court does not deem it a fit case to grant the concession of bail to the petitioners. Hence, the same is dismissed.

May 19, 2015
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(JASPAL SINGH)
JUDGE