

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 210

Criminal Miscellaneous No.M-22908 of 2015 (O & M)

Date of Decision: July 28, 2015

Jameel Khan

..... PETITIONER

VERSUS

State of Haryana

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. B.S. Sewak, Advocate, for the petitioner.

Mr. D.R. Singla, Deputy Advocate General, Haryana,
assisted by Mr. Balraj Gujjar, Advocate, for the
complainant.

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Jaspal Singh, J

1. The present petition has been preferred under Section 438 Cr.P.C. by Jameel Khan, seeking pre-arrest bail, feeling apprehension of his arrest in case FIR No.282 dated July 10, 2014 under Sections 323, 506, 325, 307, 34 IPC, registered at Police Station, Punhana, District Mewat.

2. Briefly stated, case of the prosecution as unfolded by complainant – Khalid son of Nasru, resident of village Rehpua, is that on May 29, 2014, at the marriage function of his cousin Bajid, DJ was running which was objected by Jameel (petitioner) on account of which exchange of hot words took place in between parties. Thereafter, on July 6, 2014 at about 5:00 PM, again exchange of hot words took place in between Nasru, father of complainant and petitioner – Jameel, at the time of prayer in Mosque, and his father returned to home. At about 6:00 PM, on the same day, a party consisting of Mustafa, Sehjad, Taufik, Sehroon, Ms. Jarina and Ms. Najma armed with lathies and iron rods, headed by petitioner – Jameel barged into house of complainant and opened an attack. Petitioner – Jameel dealt an iron rod blow hitting on head of complainant whereas Mustafa raised a Lathi blow to hit on head of complainant but he tried to rescue and Lathi resulted into infliction of injury on his left eye. Taufik, Sehjad and other members of party also caused injuries to father of complainant namely Nasru, uncle (Tayyub) and his brother. Thereafter, when Amru son of Sheru and Hassan Mohammad son of Kqarim attracted to the spot on hearing commotion and intervened, assailants left the spot by extending threats that they would be killed as and when they got an opportunity.

3. Contention of learned counsel for the petitioner is that allegations levelled against petitioner are totally false, frivolous and concocted one. Infact, complainant party was aggressor who opened

attack, in which, not only petitioner sustained 10 injuries including three bone deep injuries and incised wound on his head but also Abdul Sakoor, Ms. Jarina and Ms. Najma. Since, SI – Swaroop Singh, is distantly related (a neighbour of ASI – Jaichand), extended help to complainant party. ASI – Jaichand did not investigate the matter properly, and only registered a case under Sections 323, 324, 341 read with Section 34 IPC against complainant party.

4. It has further been submitted by learned counsel for the petitioner that co-accused of petitioner namely Ms. Jarina and Ms. Najma have already been granted concession of pre-arrest bail by this Court vide orders dated July 27, 2015 (Criminal Miscellaneous No.M-18480 of 2015), whereas Abdul Sakoor has been granted pre-arrest bail vide order dated March 30, 2015 passed in Criminal Miscellaneous No.M-2081 of 2015. It is a version and cross-version case and it is yet to be established as to which of parties is aggressor one.

5. Moreover, an injury attributed to petitioner is also not dangerous to life as per medical opinion. Petitioner is ready to join investigation and to abide by all the terms & conditions in case he is granted concession of bail.

6. On the other hand, learned State counsel assisted by learned counsel for complainant has strongly opposed the grant of pre-arrest bail. He has vehemently argued that petitioner is main culprit who formed an unlawful assembly and by heading the same, barged into

house of complainant while armed with deadly weapons viz. iron rods and Lathies, and caused injuries not only to complainant but also to his father, uncle and brother. Occurrence in question also cannot be termed to be a sudden one as prior to that, exchange of hot words took place not only once on May 29, 2014 but also on July 6, 2014. It was only thereafter, petitioner and his associates caused injuries to complainant and others. Moreso, a weapon of offence i.e. iron rod is still to be recovered. The custodial interrogation of petitioner is essential for that purpose. Learned State counsel accordingly prayed for dismissal of petition.

7. This Court has given a deep thought to the rival submissions made by learned counsel for parties and meticulously gone through the record available on file.

8. Undoubtedly, an occurrence took place on July 6, 2014 at about 6:00 PM, in which, both the parties sustained injuries. It is a specific stand of complainant that an unlawful assembly headed by petitioner, while armed with various kinds of weapons i.e. iron rods and Lathies etc., barged into house of complainant and opened an attack, in which, complainant as well as his father, uncle and brother sustained injuries. An injury which has been attributed to petitioner is of serious and grave nature. No doubt, petitioner as well as other members of his party also sustained injuries during the course of occurrence but petitioner who can be termed as main culprit does not deserve the

concession of bail. Recovery of weapon used by him still requires to be effected which is only possible through custodial interrogation. Even otherwise, custodial interrogation of petitioner would certainly reveal all the ramifications involved in this case. The mere fact that co-accused of petitioner have been granted the concession of pre-arrest bail, does not *ipso facto* mean that petitioner is also equally entitled. Role, participation and attribution are required to be taken into consideration while exercising discretion under Section 438 Cr.P.C.

9. Taking into consideration seriousness and gravity of offence complained off against petitioner, this Court is of the considered view that petition preferred by petitioner is meritless. In the light of what has been discussed above, this court does not find any merit in the petition so as to exercise discretion under Section 438 Cr.P.C.

10. Dismissed.

July 28, 2015

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(Jaspal Singh)
Judge