

**Crl.Misc.No.M-37653 of 2014(O&M)
and connected case**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. Crl.Misc.No.M-37653 of 2014(O&M)

Sonu

....Petitioner

Versus

State of Haryana

...Respondent

2. Crl.Misc.No.M-42689 of 2014(O&M)

Tarun

....Petitioner

Versus

State of Haryana

...Respondent

Date of Decision : 20.04.2015

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. R.S.Sihota, Sr. Advocate with
Mr. B.R.Rana, Advocate for the petitioners

Mr. Pawan Girdhar, Addl. AG, Haryana with
Mr. Himmat Singh, AAG, Haryana

Mr. John Kumar, Advocate for the complainant

MAHESH GROVER, J.

This order will dispose of two criminal petitions bearing CRM
no.M-37653 of 2014 and 42689 of 2014.

The petitioners pray for grant of pre-arrest bail in terms of
Section 438 Cr.P.C in case FIR no. 383 dated 31.7.2014 registered under
Sections 148,149, 323, 302 IPC and under Section 3 of SC/ST Act, 1989 at
Police Station Camp Palwal, District Palwal.

According to the allegations set out in the FIR number of
persons including two sons of Surjan Singh inflicted injuries on five persons
including the deceased when they objected to the petitioners and their

accomplices from playing loud music in a park in a drunken condition.

Learned counsel for the petitioners contends that petitioner in CRM no.M-37653 of 2014 has not been named in the FIR whereas name of petitioner in CRM no. M-42689 of 2014 finds mention in the FIR but the sequence of events detailed in the FIR would reveal a violent incident with no specific role to any one. It is thus pleaded that the possibility of false implication in such like situation cannot be ruled out.

On 11.11.2014 it had been stated by the learned counsel for the petitioner in CRM no.M-37653 of 2014 that he is similarly circumstanced as a co-accused in CRM no. M-37508 of 2014 where the petitioner therein namely Naresh @ Saqlain had been granted the benefit of pre-arrest bail. On the basis of parity the petitioner too was granted interim protection.

During this interregnum the investigation is complete as challan already stands submitted before the Court and the matter has now progressed to the recording of the statement of witnesses where few witnesses have been examined.

Learned counsel for the respondent on the other hand opposed the prayer for bail to contend that petitioner namely Sonu s/o Surjan is the main accused as he is named by the immediate family members of the complainant who were also the eye witnesses and were at the spot trying to rescue the deceased. They specifically named the petitioner as the one who had caused the injuries with a sharp edged weapon.

On due consideration of the matter, I am of the view that the petitioners cannot plead any parity with the case of Naresh @ Saqlain as he was not named in the FIR but the petitioner in CRM no. M-42689 of 2014 was specifically named in the FIR whereas petitioner in CRM no. M-37653

of 2014 even though not named specifically finds mention as son of Surjan as having participated in the occurrence. The FIR is not meant to be a magnacarta and is expected to give the bare outline of the facts to be sustained on the basis of investigation. The subsequent investigation has revealed that the case of the petitioners to be that of the prime accused having caused the injury with a sharp edge weapon on the person of the deceased and therefore it cannot be said to be a case where powers under Section 438 Cr.P.C should be exercised.

It would be an argument to be advanced that once the investigation is complete and trial in progress, no fruitful purpose would be served by arresting the petitioners at this stage. The Court would observe that if the benefit has accrued to petitioners on a premise which is eventually found to be incorrect as subsequent investigation has shown, the petitioners cannot plead that they be granted the benefit of Section 438 Cr.P.C. It may be a different question if the petitioners make a prayer for regular bail in the given set of circumstances.

The powers under Section 438 Cr.P.C is only intended to prevent false implication but if material indicates to the contrary Court should not hesitate to decline the prayer.

Hence, both the petitions are hereby dismissed.

April 20, 2015
rekha

(Mahesh Grover)
Judge