

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

(202)

**CRM-M-5952-2015 (O&M)
Decided on: September 01, 2015.**

Sarabjit Singh @ Lalli and another

.... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Raghav Gulati, Advocate and
Mr. Pratham Sethi, Advocate, for the petitioners.

Mr. Jashan Preet Singh, AAG, Punjab.

Mr. C.S. Bakshi, Advocate, for the complainant.

Mr. Navkiran Singh, Advocate, for DSP Sukhwinder Singh.

M.M.S. BEDI, J (ORAL)

Petitioners Sarabjit Singh @ Lalli and Yadwinder Singh have approached this Court under Section 438 Cr.P.C for grant of pre-arrest bail in a case which was registered at the instance of Rajesh Kumar alleging that petitioner along with five other accused and 15-20 unidentified members of unlawful assembly had attacked the complainant and others with an intention to kill. There are allegations of assault and injuries attributed to the petitioners in the scuffle.

Perusal of the FIR indicates that the co-accused of the petitioner namely Baljit Singh who has been attributed firing, has been granted concession of bail under Section 167 (2) Cr.P.C. The role attributed to the petitioners is that the petitioners had a scuffle with the complainant

and snatched the licensed and loaded pistol of the complainant which was recovered from the place of occurrence.

Learned counsel for the complainant has intervened to oppose the application for pre-arrest bail relying upon the interim order passed by this Court on 06.04.2015 wherein certain observations have been made against DSP Sukhwinder Singh who had allegedly deleted offence under Section 307 IPC on 12.02.2015 despite the constitution of special investigation team. A statement dated 18.02.2015 was allegedly made by the Additional Public Prosecutor before the lower Court that offence under Sections 307 and 382 IPC stand deleted for the time being which had been considered as a circumstance to grant interim bail to the petitioners.

At this stage, DSP Sukhwinder Singh represented by his counsel has sought intervention to bring it to the notice of the Court that as per the police diary offence under Section 307 IPC had not been deleted and that the said DSP had not committed any irregularity after the constitution of the special investigation team having been constituted to investigate the incident.

Without entering into the controversy regarding the addition or deletion of offence by DSP Sukhwinder Singh or his authority to delete the offence, I am of the considered opinion that the present petition for grant of pre-arrest bail can be considered on the basis of roles attributed to the petitioners. The petitioners, as members of unlawful assembly, appear to have indulged in the act of assault and the act of endangering life and safety of the public, gathered at the time of occasion of preparation of "Wardbandi" of the municipal election on the date of occurrence. Petitioners were not armed with weapons nor there is any allegations of they having

caused any grievous injury to the opposite party. The political rivalry and clash between the groups belonging to the different political acts is apparently the cause of the controversy.

Learned State counsel informs that the investigation is still in progress. Whether it is a case under Section 307 IPC or merely a case under Section 336 IPC is yet to be determined by the special investigation team. The petitioners have already joined investigation.

It is also important to mention here that the complainant in the present case was admittedly present on the spot with a loaded pistol which was allegedly snatched by petitioner No.2. Which of the parties was the aggressor, to still to be adjudicated.

In view of the above situation, the petition is allowed. It is ordered that in case of arrest of petitioners, they will be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the arresting officer subject to the following conditions:-

- (1) The petitioners will join investigation as and when required.
- (2) The petitioners will not tamper with the evidence or hamper investigation in any manner.
- (3) The petitioners will not indulge in any act of threatening or browbeating the complainant party.
- (4) The petitioners will not indulge in the similar activity of which they are accused of during entire period of trial.

It is made clear that in case of violation of any of the above said conditions, it will be open to the complainant or the prosecution agency to seek the cancellation of present bail order.

Nothing said in this order or any other order passed by this Court, will affect any departmental inquiry against any police official.

(M.M.S. BEDI)
JUDGE

September 01, 2015
harsha