

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No.M-31144 of 2015 (O&M)

Date of Decision: 25.05.2016

Rajiv and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate,
for the petitioners.

Mr. Vivek Saini, DAG, Haryana.

Mr. Aditya Sanghi and Mr. Sandeep Yadav, Advocates,
for the complainant.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant petition has been filed under Section 438 Cr.P.C. seeking concession of pre-arrest bail to the petitioners in case FIR No.186 dated 05.07.2015, under Sections 323, 341, 506, 34 of Indian Penal Code and Sections 307, 323, 148 of IPC added later on, registered at Police Station Sadar Narnaul, Mahendergarh.

Briefly, it may be noticed that FIR came to be registered on the statement of Dharmender Singh in relation to an occurrence dated 05.07.2015. Complainant stated that he was running a provision store in the village and at about 10:30 a.m., he along with his son, namely, Rajender was proceeding to his residence for taking a meal. Rajender was stated to be walking ahead of the complainant. Upon reaching home, complainant noticed that his son was not present and having come out of the house met Om Parkash in the street who informed him that Sandeep and Rajiv (present

petitioners) had caught hold of the hand of Rajender and have taken him into their "Baithak". Complainant has stated that upon having opened the door of the "Baithak" and he found Rajiv and Sandeep inflicting blows upon his son Rajender with Sarias and Surta wife of Subash and Meena wife of Rajiv were also given leg blows. Thereupon complainant along with assistance of others rescued his son and having arranged a vehicle brought him to Civil Hospital, Narnaul.

On 14.09.2015, when this petition came up for preliminary hearing, notice of motion was issued in the following terms:-

"Learned counsel for the petitioners submits that the present FIR is a counter-blast of the complaint made by wife of petitioner No.1 as she was molested but no FIR was registered. Subsequently, the FIR has been registered against the petitioners and at the most, it can be said that the occurrence took place because of incident reported by wife of petitioner No.1. Learned counsel also submits that all the injuries except injuries No.5 and 6 are simple in nature.

Notice of motion.

On the asking of the Court, Mr. Sulinder Kumar, A.A.G., Haryana, who is present in the Court, accepts notice on behalf of respondent-State.

Notice on behalf of complainant has been accepted by Mr. Sandeep Kumar Yadav, Advocate.

Learned counsel appearing on behalf of the complainant opposes the submissions made by learned counsel for the petitioners and submits that the injured was discharged from the hospital after ten days and as per opinion of the doctor, the cumulative effect of the injuries caused to the injured is that his kidney has damaged.

Learned counsel for the complainant also submits that the complainant is being threatened to compromise the

dispute and thereafter, the FIR was also registered.

Adjourned to 22.09.2015.

Meanwhile, arrest of the petitioners shall remain stayed.

Learned counsel for the petitioner is directed to supply two copies of the petition to learned counsel for the respondent-State during course of the day.”

Thereafter on 16.10.2015, the following order was passed:-

“Learned counsel for the petitioners submits that the petitioners went to join investigation but they were not allowed to join the same. An application was also moved by the petitioners before Additional Chief Judicial Magistrate, Narnaul but still they were not allowed to join the investigation.

Learned State counsel on instructions from ASI Virender Singh submits that the petitioners never came to join investigation and no order was brought to the notice of the Investigating Officer.

Learned counsel appearing for the complainant submits that because of the injuries suffered by the injured, he is on dialysis.

The petitioners are directed to join investigation on 29.10.2015 and in case, they join investigation, they shall be released on interim bail to the satisfaction of the Investigating Officer. They shall join the investigation as and when required by the Investigating Officer. They shall also comply with the conditions as envisaged under Section 438(2) of the Code of Criminal Procedure, which are as under:-

(i)that the petitioners shall make themselves available for interrogation before investigating officer as and when required;

(ii)that the petitioners shall not, directly or indirectly, make any inducement, threat or

*promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
(iii)that the petitioners shall not leave India without the prior permission of the Court.*

Adjourned to 07.12.2015.

Meanwhile, Investigating Officer is directed to file his affidavit mentioning therein as to whether the order passed by Additional Chief Judicial Magistrate, Narnaul was in his knowledge or not and as to whether the complainant is presently on Dialysis because of the injuries suffered by him.”

Having heard counsel for the parties at length, this Court is of the considered view that the prayer made in the present petition warrants acceptance.

On behalf of the petitioners the case set up is that the FIR is a counter-blast to an incident that occurred on 05.07.2015 itself wherein Rajender had made an attempt to outrage the modesty of wife of petitioner No.1. It is submitted that at that point of time petitioner No.2 Sandeep had immediately called at number 100 to inform the police and had even got in touch with one Manoj Head Constable in the Police Station and in spite of information having been furnished, no action was taken. Subsequently, Meena i.e. wife of petitioner No.1 had even submitted an application on 22.07.2015 in writing to the IGP (legal).

Perusal of the FIR would reveal that even though the complainant has alleged that his son Rajender has been assaulted and inflicted injuries by the present petitioners on 05.07.2015 yet no motive whatsoever has been attributed.

It may also be noticed that Rajender was medically examined on 05.07.2015 and as per MLR, the following 08 injuries were noticed:

1. Clean lacerated wound on left parietal region of scalp measuring 2.1 x 1cm in size fresh bleeding tenderness present. Advised CT Head.
2. A clean lacerated wound 1x 0.9 x .5 cm on left side of occipital region of scalp. Advised CT head.
3. Contusion 3x2cm on lateral aspect of left leg with tenderness bluish discoloration-6 cm from knee joint. Advise X-ray left. AP Left.
4. Contusion 2x1 cm later to malleolus of the left ankle joint x-ray left ankle.
5. Swelling tenderness with contusion on medial aspect of the left forearm size 5x2 cm, 4 cm towards wrist. X-ray forearm (L).
6. Swelling tenderness redness without bleeding over dorsal aspect of left hand around 4th & 5th M.C. X-ray left hand advise
7. Swelling tenderness bluish discoloration starting from mid of forearm @ extending to elbow right without bleeding-X-ray right forearm.
8. Contusion 3 cm x 2 cm around the left shoulder blade with bluish discoloration tenderness without bleeding X-ray right elbow.”

On the basis of the said MLR, initially case was registered for offence under Sections 323, 341, 506 and 34 IPC.

It is only subsequently i.e. on 21.08.2015 after a period of almost six weeks from the date of occurrence that offence under Section 307 IPC has been added.

It has gone uncontroverted that apart from injuries No.5 and 6 all the other injuries were opined to be simple in nature.

Injuries No.5 and 6 even though opined as grievous were on

the left forearm and left hand of injured Rajender and both the injuries are stated to have been inflicted with a blunt weapon.

Submission made by learned Senior counsel that the injuries No.5 and 6 having been caused with a blunt weapon would fall within the ambit of Section 325 IPC cannot be said to be without merit.

Be that as it may, a medical opinion has been rendered in the following terms:-

“In my opinion cumulatively injury No.1 to 8 described in the above mentioned MLR are dangerous to life.”

Under such circumstances, offence under Section 307 IPC as to whether made out in the present case would be a moot question.

State counsel has informed that petitioners have since joined investigation. No recovery is to be effected from them.

In view of the facts and circumstances and contentions noticed hereinabove, custodial interrogation of the petitioners would not be warranted.

Petition is allowed. Order dated 16.10.2015, passed by this Court, is made absolute.

It is, however, made clear that observations contained in this order are confined only as regards consideration of the prayer of the petitioners for grant of anticipatory bail and would have no bearing on the merits of the case.

Disposed of.

25.05.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**