

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42570-2016 (O&M)

Date of decision: December 02, 2016.

Sukhwant Kaur

... **Petitioner**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Tarunveer Vashist, Advocate for the petitioner.

Shri Shailesh Gupta, Additional Advocate General, Punjab.

Shri Pushpinder Kaushal, Advocate for the complainant.

A.B. Chaudhari, J. (Oral):

Notice of motion to the respondents. Service is waived off.

Rule. Heard forthwith.

Learned Counsel for the petitioner vehemently argued that the decree was passed in favour of the petitioner in respect of the suit house property and was confirmed upto the last court. The decree states that the defendants were required to remove the construction, barbed wire, bricks, sand bajri, chakii stone etc. from the site, so on and so forth. According to him, this decree having been confirmed, the petitioner was entitled to take forcible possession because the occupants were not vacating the suit property and were resisting. He has shown me the photographs and contended that as a matter of fact, the possession was already taken on 22nd

August and it is thereafter on the fateful day-night, the petitioner had carried

out demolition of the entire construction and therefore, no offence can be said to have been made out as the demolition was made in the wake of warrants of possession issued by the court with the help of the court staff and as such, no offence can be said to have been made out.

Per contra, learned counsel for the respondent-State as well as complainant submit that the petitioner had, on the fateful night, brought two JCB machines and entered the house after breaking the main gate as if the petitioner was on a war path and thereafter not only demolished the property but also brutally assaulted the complainant and the family members of the complainant and the treatment on the wife of the respondent-complainant is still going on in the hospital. They, therefore, submit that there is no case made out for the grant of anticipatory bail.

Learned Counsel for the respondent as also the complainant oppose the application for grant of bail and support the impugned order rejecting the bail application.

I have heard Learned Counsel for the parties for quite some time. It is true that there is a decree passed in favour of the petitioner in respect of the suit property, so also the warrants of possession. However, the decree nowhere authorizes the petitioner to barge his entry into the house by breaking open the main gate along with two JCB machines and thereafter demolish the house and brutally assault the complainant and his family members, as is seen from the FIR. The following extracts from the FIR are reproduced as under:-

“... At night of 29/30 August, we all the family members were sleeping in own rooms and the main gate of the house was closed.

Time would be around 12.35 of night. I heard a loud noise near gate and I suddenly wake up and when I saw outside one JCB machine entered into my house after breaking the main gate, in meanwhile one more JCB machine entered in the open area (vehra) of my house and these two JCB machines having No. HR-55D-6067 and PB-07-AF-7705 starting demolishing washroom, Turi Wala kotha and cattle shed. I told them to stop in a loud voice and in between Gursewak Singh Harpalpura, his wife, Sukhwant Kaur, Ujjagar Singh of our village and his son Balkar Singh, along with 3 unknown ladies and 5/6 unknown persons which can be recognized if they come before me, all were entered in my bedroom and they armed with kirpan, rods and lathis and they caught hold me and my wife Jaspal Kaur and started beating us, Gursewak Singh hold a kirpan in his hand and he attacked on my left side of head, and his wife Sukhwant Kaur given a lalkara and said that, today don't spare him and give him a share of land. To heard this Gursewak Singh given blow on my right shoulder, Sukhwant Kaur and other ladies dragged my wife on the floor, and stretched her hairs and given blow on her back with danda so many times, we shouted a lot and they said to us today we came with proper planning, nobody will come to release you, Gursewak Singh hold my hairs and stretched me and get out of that place. Then I saw that around 200/250 persons standing in vehra and loaded with lathis and above said JCB machine demolished the two washroom, Turi wala Kotha, boundary walls, cattle shed, which we built by the court order; when I make a call to the police, these all persons went away along with their weapons and gate from the spot. A ambulance was called by my family through number 108 and admitted me and my wife on which my treatment is going on. ...”

The submission that the allegations in the FIR are false, cannot be accepted at this stage as it is a matter of investigation. The contention raised by the petitioner that the possession was already taken on 22nd August, is again a matter of investigation. As it is today, there is an FIR in

which there are serious allegations. No court can allow the rule of law to be flouted with impunity in the manner in which the petitioner has done since there is no mandate of law in favour of the petitioner to take possession in the manner it has been done by the petitioner. Such a course of action is not recognized by law and in the civilized society governed by the rule of law, this cannot be allowed to happen. This court cannot come to the help of the petitioner. Consequently, this petition is dismissed.

Liberty to apply for regular bail.

[**A.B. Chaudhari**]
Judge

December 02, 2016.
kadyan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No