

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

CRM-M-10249 of 2017

Date of decision: 21.8.2017

Amarjit Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.S. Manaise, Advocate
for the petitioners.

Mr.K.S. Aulakh, DAG, Punjab.

Mr.Onkar Singh Sodhi, Advocate
for the complainant.

H.S. MADAAN, J.

The instant petition under Section 438 Cr.P.C. for pre-arrest bail for newly added offences under Sections 325 and 326 IPC has been filed by petitioners Amarjit Singh and Taranjit Singh, both of them being accused in FIR No.148 dated 28.9.2016, under Sections 323, 324, 506, 34 IPC(Sections 325 and 326 added later on), registered with Police Station

City, Gurdaspur, District Gurdaspur.

Briefly stated, the facts of the case as per prosecution version are that complainant – Kulbir Singh Sandhu along with his family has been residing in a house at Civil Lines, Gurdaspur. His brother Amarjit Singh accused along with his family has also been residing there. Sh.Prem Singh Sandhu father and Ms.Amrit Kaur a handicapped sister of Kulbir Singh Sandhu and Amarjit Singh are also putting up in that house. Since Prem Singh Sandhu had withdrawn a sum of Rs.4,20,000/- from the bank account of Ms.Amrit Kaur, Ms.Amrit Kaur had lodged a complaint under Section 420 IPC against him. The complainant was a witness in that case, therefore, Prem Singh Sandhu, Amarjit Singh and his sons Taranjit Singh and Karanjit Singh @ Mithu used to give threats to the complainant. On 24.9.2016 at about 11:00 p.m. as wife of the complainant was unwell, the complainant along with his son Sukhmanbir Singh had come out in the courtyard. There his father Param Singh Sandhu empty handed, Amarjit Singh armed with a datar, Taranjit Singh armed with a datar and Karanjit Singh armed with a hockey stick appeared. Prem Singh gave a slap to his son Sukhmanbir Singh, an Advocate by avocation resulting in his turban falling down. Prem Singh Sandhu raised a lalkara that Sukhmanbir Singh was root cause of problems and was causing problems to them being an Advocate, hearing that Amarjit Singh gave a datar blow on the head of Sukhmanbir Singh, Taranjit Singh gave two datar blows on his right leg, Karanjit Singh @ Mithu gave many hockey blows to Sukhmanbir Singh. When the complainant intervened then Prem Singh Sandhu gave a fist blow to the complainant hitting him on face and

nose, Karamjit Singh gave hockey stick blows on head, leg and waist of the complainant. After the incident the injured were removed to hospital, where they were medico legally examined. Five injuries were found on the person of Sukhmanbir Singh, Injuries No.1, 4 and 5 were reported to have been caused with sharp edged weapon whereas injuries No.2 and 3 with a blunt weapon. All the injuries were kept under x-ray observation. In terms of the record of Hargun Hospital, Batala Road, Amritsar dated 25.9.2016, fracture lower end ulna and fracture tibia with two incised wound were observed whereas regarding medical examination of Kulbir Singh, eight injuries were found to be there having been caused with a blunt weapon, injuries No.3 to 7 were reported to be simple in nature whereas injuries No.1, 2 and 8 were subjected to x-ray examination. There were fracture of nasal bone of Kulbir Singh. Such injuries were grievous in nature caused with a blunt weapon, coming within the purview of Section 325 IPC.

After registration of the FIR, the accused joined the investigation. As offences were bailable, they were released on bail, however, they had got recovered weapons of offence. When offence under Section 325 and 326 IPC were added later on, apprehending their arrest in this case, the petitioners had approached the Court of Sessions seeking grant of pre-arrest bail but their such application was dismissed by the Court of learned Additional Sessions Judge, Gurdaspur vide order dated 14.3.2017, as such they have knocked at the door of this Court asking for similar relief.

Notice of the petition was given to the respondents.

Complainant has appeared through Mr.Onkar Singh Sodhi, Advocate whereas State of Punjab has appeared through State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners has argued that petitioner had joined the investigation when FIR was originally registered and weapons have also been recovered from them. This fact is not disputed by learned State counsel. This is also not in dispute that after being arrested, the petitioners had been granted bail as the offences for which they had been booked were bailable. It was after about 5 months when offences under Sections 325 and 326 IPC were added and the petitioners became apprehensive of being arrested for newly added offence under Section 326 IPC since Section 325 happened to be bailable. Learned counsel for the petitioners has contended that petitioners had already joined the investigation and recovery of weapons has been effected from them when they were released on bail after registration of the FIR as the offences for which the FIR was registered happened to be bailable ones. They have not misused the concession of bail till date. Their custodial interrogation is not required, as such, they deserve to be granted pre-arrest bail. In support of that contention, learned counsel for the petitioners has relied upon authority **Rakesh Versus State of Haryana, 2011(2) R.C.R.(Criminal) 436** by a Coordinate Bench of this Court which was a case when accused was on bail for an offence under Sections 324, 506 and 34 IPC, whereas offences under Sections 326 and 323 IPC were added subsequently. The accused had sought anticipatory bail under newly added offences.

Observing that both the offences were triable by Magistrate, the accused was entitled to bail on furnishing fresh bail bonds for added sections.

Learned counsel for the complainant has opposed the application for grant of bail vehemently submitting that keeping in view the number and gravity of injuries on the person of the injured, the petitioners do not deserve any concession for bail. In support of his contention, he has referred to authority **Shanti and others Versus State of Punjab, 1997(2) Recent Criminal Reports 380** by a Coordinate Bench of this Court which was a case when a bride had been set on fire by the accused. Initially the case was registered under Sections 498-A, 307/34 IPC and bail was granted to accused, however, on death of bride offence under Section 304-B IPC was added. On reconsideration bail granted to the accused was cancelled by Sessions Judge, which order was upheld by the High Court.

The second authority referred to by learned counsel for the complainant was **Harjinder Singh Versus State of Punjab, 1998(2) RCR 779 (P&H)** wherein while dealing with the matter regarding grant of anticipatory bail for offences under Sections 326, 325, 323 IPC when grievous injuries were inflicted by the accused, it was observed that no ground was made to grant anticipatory bail.

The third authority referred to by learned counsel for the complainant was **Sukhwinder Singh @ Laddu Versus State of Punjab, 2007(1) Chandigarh Law Reporter 130** wherein while dealing with a case for grant of anticipatory bail when grievous hurt had been caused by giving a kirpan blow on finger of the left hand of injured, it was observed

that the accused was not entitled to grant of anticipatory bail.

After hearing the rival contentions, I find that keeping in view the facts and circumstances of the case more particularly the fact that there is delay of about four days in lodging of the FIR; that injuries were declared grievous after about 5 months of the incident; that the petitioners have since joined the investigation and have been released after registration of the FIR on bail and recoveries have been effected; that the petitioners have not misused the concession of bail; that the report given by SHO Police Station City, Gurdaspur dated 1.11.2016 that no body had used any sharp weapon during the incident and as a matter of fact injured Sukhmanbir Singh was under the influence of alcohol, on account of which he fell on a steel drum two times and sustained injuries on his right leg; that observing Karamjit Singh and Prem Singh to be innocent; that there is a cross version of the of the incident in which petitioner Amarjit Singh had suffered three injuries one of which on right hand was found to be grievous in nature for which cross case for offences under Sections 323, 325, 34 IPC against Sukhmanbir Singh and Kulbir Singh is stated to have been registered, the petition deserves to be allowed.

As regards the authorities referred to by learned counsel for the complainant, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Therefore, the interim bail granted to the petitioners on 27.3.2017 is made absolute, subject to their fulfilling conditions under Section 438(2) Cr.P.C.

The petition stands allowed accordingly.

21.8.2017

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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No