

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

**CRM-M-20184-2017
Date of decision :18.09.2017**

James

..... Petitioner

Versus

State of Punjab

..... Respondent

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

Present : Mr. B.D. Sharma, Advocate
for the petitioner.

Ms. Malvika Singh, AAG, Punjab.

H.S. MADAAN, J.

Mr. Rahul Bhargava, Advocate puts in appearance on behalf of the complainant by filing power of attorney, which is taken on record.

This application for pre-arrest bail has been filed by petitioner - James an accused in FIR No.85 dated 03.06.2016 for offences under Sections 323, 324, 506, 427, 148, 149 IPC (Section 326 IPC added later on) registered at Police Station Division No.2, Jalandhar.

Briefly stated facts of the case as per prosecution version are that complainant – Jyoti Masih son of Shri Sabar Masih resident of H. No.162, Banda Bahadur Nagar, Police Station Division No.2, Jalandhar

aged about 38 years got his statement recorded with the police on 03.06.2016 stating therein that he is a taxi driver; that on 22.05.2016 at about 1:30 p.m. when he was present at his house, his elder brother Sundar Masih who along with his family reside in a room on the upper floor of his house along with James (present petitioner) and his wife Parveen were closing the ventilator in the street thereby blocking air and light for the complainant; that according to the complainant he went to the roof to enquire from his brother and family member as to why ventilator was being closed, the moment he reached there Sundar Masih raised a *Lalkara* that complainant be taught a lesson for stopping them for closing ventilator; that Sundar caught hold of complainant from his left arm, James (petitioner) brought a *Datar* from inside the house and gave a blow to the complainant hitting him on right arm upon which the complainant has raised alarm to save himself which attracted his son Joban and Prince son of Mottu who saved the complainant from the assailants, but such accused assailants had caused injuries to Jacob, William and Jones, besides Parveen with bricks and bottles; that a large number of persons of the area arrived there, such accused assailants damaged AC belonging to the complainant installed on the roof. The injured were taken to Civil Hospital, Jalandhar, where they were medically treated and medico legally examined. After the incident the resident of Mohalla tried to effect compromise between the parties but that effort could not materialize, as such, matter was referred to the police.

Apprehending his arrest in this case, the petitioner approached the Court of Addl. Sessions Judge, Jalandhar for pre-arrest bail, however, said application was dismissed vide his order dated 17.05.2017, as such, he has knocked at the door of this Court seeking similar relief, notice of the

petition for grant of pre-arrest bail filed by the petitioner before this Court was given to the State, which has put in appearance and complainant has also puts in appearance through his counsel.

After hearing learned counsel for the parties, besides, going through the record, I find that there is absolutely no ground to grant concession of pre-arrest bail to the petitioner.

Learned counsel for the petitioner states that fight had taken place between collateral and there is counter version of the incident also. There is only single injury with *Datar* attributed to the petitioner. The petitioner has already joined the investigation during the period interim bail granted to him. The recovery of weapon has also been effected, therefore, his custodial interrogation is not required and he be granted concession of pre-arrest bail, whereas this request is opposed by the State counsel and counsel for the complainant vehemently.

No doubt, the petitioner has since joined the investigation and recovery of weapon has also been effected from him but then keeping in view the fact that the grievous injury on the person of the complainant has been attributed to him and he is said to have been assaulted the complainant with a dangerous sharp edged weapon like *Datar* without any provocation makes the things very serious. Merely by joining the investigation and getting the *Datar* recovered does not mean that his custodial interrogation is not necessary.

In a citation **State Represented by the C.B.I. vs. Anil Sharma, 1997(4) RCR (Criminal) 268**, it was observed that *custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail.*

At this stage, question to be decided is that as to whether pre-arrest bail is to be granted or not. The truthfulness of the allegations in the FIR is not to be determined by holding a mini trial and the allegations are to be taken as such. Pre-arrest bail is a relief which is not to be granted just at the asking of an accused in routine manner but in exceptional circumstances. Its purpose is not to screen the criminals from legal action and to save them from custodial interrogation which being mere elicitation-oriented, result in the extraction of the important information from mouth of a criminal. Custodial interrogation of the petitioner is necessary for proper and effective investigation. In case such custodial interrogation is denied to the investigating agency, that will leave many loose ends and loopholes, adversely affecting the investigation which is uncalled for. Thus finding no merit in the petition, the same stands dismissed.

18.09.2017*Gaurav Sorot*

(H.S. MADAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**