

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

**Criminal Misc. No.M-29121 of 2017 (O&M)
Date of Decision: 21.09.2017**

Gurnam Singh

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Ms. Loveleen Dhaliwal, Advocate
for the applicant in CRM-30046-47 of 2017.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioner in FIR No.208 dated 09.06.2013 under Sections 323, 324, 341, 304, 34 IPC and (under Section 302 read with Section 34, Section 324 read with Section 34, Section 323 read with Section 34 and Section 341 read with Section 34 IPC, under which, charges were framed vide order dated 17.9.2014), registered at Police Station Nissing, District Karnal.

The aforesaid FIR was registered on the statement of Gurlal Singh, complainant, that on 8.6.2013, he along with his son Harvinder

Singh and his friends Mamta Singh son of Lakhvinder Singh, Davinder Singh son of Narinder Singh and Gagandeep Singh son of Jagir Singh, were coming from their fields situated in Jalala Viran to their village in car No.HR-07R-4833 (make Safari). When they reached near the dera of Major Singh son of Sukha Singh, one car (make Fortuner) and two motorcycles, whose numbers were not seen, were already stationed there on the road. In the said vehicle and motorcycles, Major Singh son of Sukha Singh, Charat Singh son of Sukha Singh were having *gandasis* in their hands, Ajaib Singh son of Sewa Singh was having *Takva* in his hand, Karan Singh son of Ajaib Singh was having sword in his hand, Gurnam Singh and Gurmukh Singh sons of Boorh Singh were armed with *gandasis* and Sahab Singh son of Boorh Singh was armed with sword, Gurnam Singh son of Sewa Singh was armed with *lathi*, Gulab Singh son of Gurnam Singh was armed with iron rod whereas Jasvinder Kaur wife of Sultan Singh, who was having *danda* in her hand, were standing there. They stopped the car of the complainant and the petitioner Gurnam Singh and Jasvinder Kaur raised *lalkara* that they will teach a lesson to the complainant and others for not leaving the possession over their land. The accused opened the door of their vehicle and pulled the complainant, his son and friends down. The petitioner along with other co-accused caused injuries to the complainant and his son and therefore, the present FIR was registered.

Learned counsel for the petitioner has argued that the complainant has suppressed the genesis of occurrence. In fact, a cross-case was also registered against the complainant under Sections 148, 149, 323, 354-A(1), 452, 325, 307, 427, 506 IPC in the same FIR and during

investigation, the police has found the petitioner innocent and accordingly, report under Section 173 CrPC was submitted only against Major Singh, Charat Singh, Ajaib Singh and Karan Singh. However, during trial, the prosecution has moved an application under Section 319 CrPC seeking summoning the petitioner along with other accused, as additional accused, which was dismissed by learned Additional Sessions Judge, Karnal vide order dated 28.7.2015. The aforesaid order dated 28.7.2015 was challenged by the complainant in CRR-3155-2015, wherein vide order dated 13.10.2015, liberty was granted to the complainant to move a fresh application under Section 319 CrPC on the basis of statements of Gagandeep Singh and Mamtaj Singh. However, the second application moved by the prosecution was also dismissed vide order dated 11.12.2015 passed by Additional Sessions Judge, Karnal. Thereafter, vide order dated 24.08.2016, CRR-3155-2015 was partly allowed only qua the petitioner - Gurnam Singh.

In this background, the petitioner has filed the present petition seeking anticipatory bail.

Vide order dated 11.8.2017, while issuing notice of motion, this Court had directed that in case the petitioner surrenders before the trial Court within a week, he shall be admitted on bail, subject to his furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

Learned counsel for the petitioner submits that pursuant to the aforesaid order dated 11.8.2017, the petitioner has surrendered before the trial Court and he has been admitted on bail.

On the other hand, learned counsel for the complainant has filed CRM-30046-47-2017 for impleading him, as a party and for cancellation of bail of the petitioner.

Learned counsel for the applicant-complainant has stated that the petitioner has been summoned by the trial Court and he is not entitled for bail. She has referred to judgment of Hon'ble the Apex Court in the case of **Lavesh v. State (NCT of Delhi) 2012(4) RCR (Criminal) 240** to contend that when a person against whom a warrant has been issued is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, he is not entitled for the relief of anticipatory bail. In fact the Court should not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter.

I have heard learned counsel for the parties.

The petitioner has duly appeared before the trial Court and he has been admitted on bail. Once the petitioner has surrendered to the jurisdiction of the trial Court to face trial and has been admitted on bail, he is no more a proclaimed offender. Moreover, this Court cannot ignore the fact that during investigation, the police while submitting its report under Section 173 CrPC has found the petitioner innocent. Rather, it is only on an application filed under Section 319 CrPC, the petitioner has been summoned to face trial. So far as involvement of the petitioner or commission of offence in this case is concerned, it is yet to be decided by the trial Court during the course of trial and the complainant shall be required to prove their case. Therefore, no purpose would be served to

keep the petitioner in custody, especially when the petitioner has shown his inclination to face trial.

Considering the fact that during initial investigation, the police has found the petitioner innocent and now, he has surrendered before the trial Court to face trial and admitted on bail, this Court finds that judgment in the case of **Lavesh** (*supra*) is not attracted to the present case.

Accordingly, the present applications filed on behalf of the complainant seeking his impleadment as well as for cancellation of bail granted to the petitioner are dismissed.

Consequently, the present petition is allowed and the interim order dated 11.08.2017 is made absolute.

September 21, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No