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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35175-2017[O&M]

Date of Decision:- 01.11.2017

Anita and others

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. V.K.Jindal, Advocate,
for the petitioners.

Mr. Anmol Sandhu, AAG, Punjab
for the respondent State.

Mr. S.S.Grewal, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present petition under Section 438 of Code of Criminal Procedure [for short, "the Code"] for grant of pre-arrest bail to the petitioners in case, bearing FIR No. 91 dated 25.07.2016 registered under Sections 302, 307, 447, 506, 511, 120-B, 148 read with Section 149 IPC and Sections 25 and 27 of the Arms Act, at Police Station Dehlon , District Ludhiana.

2 Learned counsel for the petitioners contended that the petitioners have been summoned as additional accused under Section 193 of the Code, though they have been found to be innocent during detailed enquiry conducted by Assistant Police Commissioner, CO Wing, Ludhiana. The allegations in the FIR are against Raj Kumar and Kuldeep

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Singh Bhullar who have already been arrested and are in custody. The petitioners were found to be innocent on the basis of enquiry report dated 13.09.2016 (Annexure P/2). The order dated 5.8.2017 (Annexure P/5) was passed on an application filed by the complainant of the case under Section 190, 239 and 240 of the Code and bailable warrants were issued against the petitioners.

3. Learned counsel for the petitioners also contended that as the petitioners have been found to be innocent during investigation proceedings, they be released on pre-arrest bail. On this point, reliance was placed upon the judgment of Hon`ble Supreme Court in **Siddharam Satklingappa Mhetre vs. State of Maharashtra and others, 2011 (1) R.C.R. (Criminal) 126**, wherein it has been observed that in case there is some doubt as to the genuineness of the prosecution case, in the normal course of events, the accused is entitled for order of bail. On the same point, reliance was also placed upon the judgments of Co-ordinate Benches of this Court in **Bajinder Singh and another vs. State of Punjab, 2015 (3) R.C.R (Criminal) 950**; **Mohit and another vs. State of Haryana CRM-M-41109 of 2016 decided on 18.11.2016**; **Ishro Devi and others vs. State of Punjab, 2016(5) R.C.R. (Criminal) 402**; **Manjinder Kaur alias Bholi vs. State of Punjab, 1996 (2) R.C.R. (Criminal) 99**; **Anil Kumar vs. State of Haryana, 2004 (4) R.C.R. (Criminal) 475** and **Sukhdev Singh vs. State of Punjab, 2009(5) R.C.R. (Criminal) 767**.

4. Learned State counsel affirmed the factum regarding enquiry report (Annexure P/2).

5. Learned counsel representing the complainant contended that

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as per the First Information Report recorded on the basis of statement of complainant, Sharda Bansal, there was a land dispute and on the date of occurrence, i.e. 25.07.2016, Raj Kumar along with the present petitioners and some other persons entered forcibly into the disputed land, which was objected to by the husband of the complainant, namely, Dharampal Bansal and one Shakti Sharma. During the occurrence, Raj Kumar (co-accused) took out the pistol from his pocket and fired on the left side of chest of Dharam Pal. The remaining co-accused gave punches to the complainant. Raj Kumar fired straight shot which hit on the right arm of Sanjay and petitioner No.5, Ram Chand took pistol from Raj Kumar and fired at Dharam Pal which hit him on his right side of chest near underarm. Dharam Pal and Sanjay fell on the ground and kick blows were allegedly given by present petitioners alongwith co-accused. Dharam Pal was declared dead whereas Sanjay was taken for medical treatment.

6. Learned counsel for the complainant also contended that there was absolutely no reason or basis for the enquiry report submitted by Assistant Commissioner of Police and the same has already been considered by learned Additional Sessions Judge while taking cognizance against the present petitioners on application under Section 190, 239 and 240 of the Code. That way, the enquiry report (Annexure P/2) has already been considered and rightly discarded by learned Additional Sessions Judge. Petitioner No.5, Ram Chand fired upon Dharam Pal (deceased) on his right side of chest near underarm and the remaining accused were also actively involved in the occurrence. There is no ground to release the petitioners on pre-arrest bail and the present application be dismissed.

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7. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that if the first information version, by way of statement of Sharda Bansal, complainant is taken into consideration, there are specific allegations of causing fire arm injuries by Raj Kumar, who had fired upon Dharam Pal on his left side of chest. Thereafter, petitioner No.5, Ram Chand had taken the pistol of Raj Kumar and fired upon Dharam Pal on his right side of chest near underarm and Dharam Pal died. As per the allegations, the other petitioners are also actively involved in the commission of offence and their presence on the spot is as per first information version of the complainant. As regards to the enquiry report (Annexure P/2), submitted by Assistant Commissioner of Police, the same has already been considered by learned Additional Sessions Judge vide orders dated 5.8.2017 (Annexure P/5) and learned trial Judge was not satisfied with the enquiry report (Annexure P/2) and as such took cognizance against the present petitioners while exercising powers under Sections 193, 194 and 240 of the Code. Present petitioners have already been ordered to appear before the Court below and they are avoiding the process and have filed the present petition for pre-arrest bail.

6. In **Siddharam Satklingappa Mhetre's case (supra)**, Hon`ble Apex Court was of the view that the Court is to consider all the aspects while granting relief of bail, but in the present case, if all the circumstances are taken into consideration that the present petitioners are involved in a case under Sections 302, 307, 447, 506, 148 read with Section 149 IPC and Section 25 of the Arms Act and the allegations are that present

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petitioner No.5, Ram Chand had fired upon deceased Dharam Pal on his chest with a pistol and other petitioners were present on the spot and were actively involved and there is specific role of the petitioners as well, there is absolutely no case for grant of pre-arrest bail to the petitioners. Similarly, the facts of the present case are distinguishable from the facts of **Bajinder Singh and another; Mohit and another; Ishro Devi and others; Manjinder Kaur alias Bholi; Anil Kumar and Sukhdev Singh cases' (supra)**, relied upon by learned counsel for the petitioners.

7. In view of the above, the present petition stands dismissed.

November 01, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
No