

Sr. No.209

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

**CRM-M-26796-2018
Date of decision:16.11.2018**

Bajrang

.....Petitioner

versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. S.K.Bishnoi, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.125, dated 20.05.2018 under Sections 148,149,323,341,379-B,506 of IPC and Section 25,54/59 of Arms Act, registered at Police Station Adampur, District Hisar.

As per the allegation contained in the FIR, the petitioner is alleged to have come in a Safari vehicle along with 6-7 other persons. They stopped the vehicle and came out. Then the present petitioner is alleged to have caused injuries to the Complainant; with iron rod held in his hand. This injury is alleged to have been caused on the head of the Complainant. Still further it is alleged that the petitioner had taken away Rs.8,000/- from the pocket of the Complainant and also damaged vehicle of the petitioner. After this, the complainant was saved by the other persons. The petitioner along with his accomplices fled away away from the spot.

Notice of motion was issued in the case and the petitioner was granted interim protection vide Order dated 27.06.2018. On the next date,

the Court was apprised that the petitioner was not joining the investigation. As a result, the petitioner was again directed to join the investigation vide Order dated 19.07.2018; by continuing the interim protection granted to him. On the next date; once again, the case was adjourned to enable the petitioner to join the investigation and the interim order was continued vide Order dated 12.09.2018. However, on the next date; i.e. on 11.10.2018, learned counsel for the State had again informed the Court that the petitioner was not joining the investigation. At this time, learned counsel for the petitioner had submitted that petitioner had gone to the Investigating Officer for joining the investigation, however, the Investigation Officer had not interrogated him. As a result, vide order dated 11.10.2018, it was ordered that if the petitioner had the apprehension that the Investigation Officer would not join the petitioner in investigation, then he could take his counsel alongwith him to the police station for joining the investigation. That is how the case has come up for hearing today.

Today again; learned State counsel has submitted that although the petitioner has joined the investigation, however, he has not co-operated with the Investigating Officer. It is pointed out that even the iron rod with which the petitioner is alleged to have caused injury to the complainant, a fact which has been corroborated by the witness, has not been got recovered by the petitioner so far. It is further pointed out by the learned State counsel that the co-accused of the petitioner has admitted and disclosed that it was the petitioner who had brandished the pistol at the crowd; present at the place at the time of occurrence. Even that pistol is yet to be recovered from the petitioner.

On the other hand, learned counsel for the petitioner submits

that the petitioner has joined the investigation and since he is not involved in the incident, therefore, he can not get the alleged weapon of offence recovered. Learned counsel further submits that the Investigating Officer is not working honestly and impartially in this case, therefore, despite the petitioner also having made a complaint to the police; the police had not registered a case on his complaint. As a result, the petitioner has filed a criminal complaint against the Complainant of the present case; in which the present petitioner has alleged that an amount of Rs.7,000/- was snatched from him by the present complainant and his vehicle was also damaged. It is further submitted by the learned counsel that, in fact, all the injuries on complainant side are self-inflicted and simple in nature. Learned counsel further submits that offence under Section 379 IPC is not made out. Hence it is prayed that petitioner be granted concession of anticipatory bail.

Having heard the learned counsel for the parties, this Court finds that the petitioner has been granted sufficient opportunity to join the investigation. However, despite having been given 4 opportunities to join the investigation and to co-operate with the police, the petitioner has not fully co-operated with the Investigating Officer. Therefore, this Court finds that it would not be appropriate to exercise its power under Section 438 Cr.P.C in favour of the petitioner; and thereby scuttle the proper investigation of the case.

So far as the argument of learned counsel for the petitioner that the injuries are simple and self-inflicted is concerned, suffices it to say that nature of injury or the fact whether they are self-inflicted or not; is a matter of evidence. The fact remains that as per the allegations contained in the FIR, the injuries to the complainant with the iron rod are attributed to the

petitioner. Injuries are duly corroborated by the medical evidence. Therefore, the police are not unjustified in asking the petitioner to get recovered the alleged weapon of offence.

Next argument of learned counsel for the petitioner; that the petitioner has also filed a criminal complaint against the complainant of the present case, is not even relevant for the purpose of the present proceedings. The cross-version of the accused is, at the best, a defense of the petitioner, which he would be required to prove before the Trial Court, in case he insists upon this defence during the present trial. Although learned counsel for the petitioner has also raised suspicion against the police officer, who investigated the petitioner earlier, however, learned counsel for the petitioner himself has admitted that the said police officer was no more the investigating officer of the case. Last time, the petitioner was joined investigation by the police officer different than the one against whom the petitioner levelled allegations of malafide and not being honest in exercise of his authority.

The last submission of the learned counsel for the petitioner is that although Investigating Officer of the case is changed now but since the police station is same, therefore, the official bias of the police can not be ruled out. This Court finds it difficult to accept this kind of vague and general allegation. In any case, jurisdiction of the police station can not be changed simply because petitioner apprehends something against the police; without there being any basis.

It is settled, as held by the Hon'ble Supreme Court, that the interrogation of an accused by the police, when he is protected by the Court Order is qualitatively and quantitatively different than the interrogation

done; when the accused does not have the sense of protection of the Court Order. Of course, the accused, as an individual, has right to life and liberty, however, that right to life and liberty can very well be curtailed; as per the procedure prescribed by law. In case of an investigation against the accused, the ordinary procedure prescribed by law is that the Investigating Officer of the case can arrest a person even without warrant. However, to protect a person from un-due harassment at the hands of police, an extraordinary power has been conferred upon the Court under Section 438 Cr.P.C; to grant an anticipatory bail to an accused. But this power can be exercised by the Court only in case the Court is convinced of some extenuating circumstances, leading predominantly, towards the innocence of the accused, coupled with the fact that in case the accused is granted protection against his arrest, the investigation by the police would not be unduly hampered.

In the facts and circumstances of the case, the Court does not find any extenuating circumstances which may justify the exercise of power under Section 438 Cr.P.C in favour of the petitioner. There are specific allegations of injuries caused by him with specific article. That article is yet to be recovered. Hence the custodial interrogation of the petitioner would be required in the present case.

In view of this, there is no ground to scuttle the full and fair investigation by the police; in its right earnest.

Dismissed.

16th November, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>