

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

CRM-M-27365-2018 (O&M)
Date of Decision:-25.07.2018.

Pindi Singh @ Harbhagwan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

(2.)

CRM-M-27921-2018 (O&M)

Gora Singh @ Nirmal Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

(3.)

CRM-M-29178-2018 (O&M)

Sarabjit Singh @ Reethu and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. M.S. Viridi, Advocate for the petitioner in
CRM-M-27365-2018.

Mr. Jasmail Singh Brar, Advocate for the petitioners in
CRM-M Nos.27921 and 29178 of 2018.

Mr. Luvinder Sofat, AAG, Punjab assisted by
DSP Jasmeet Singh in person.

Mr. Sudesh Kumar Khurcha, Advocate for the complainant.

P.B. BAJANTHRI, J. (Oral)

By this common order, the above 3 petitions shall be disposed as all these are arising out of common FIR. For brevity, facts are being extract from CRM-M-27365-2018.

2.) Petitioners have sought for grant of concession of anticipatory bail in case FIR No.86 dated 20.06.2018 under Sections 365/342/148/149 IPC and Section 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.

There were serious allegations of kidnapping abducting and wrongfully confining against the petitioners and so also offences under the SC & ST Act.

3.) Learned counsel for the petitioners in support of prayer in these cases relied on Supreme Court decision passed in **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra** reported in **2018 (2) R.C.R. (Criminal) 552** while pointing out para 83 to the extent that before registering offences under SC/ST Act, Deputy Superintendent of Police has to hold preliminary inquiry and thereafter, action could be taken. It was also submitted that there was contradictory statement relating to missing of 4 boys, namely, Neeli Singh, Harmesh Singh, Nanha Singh and Titu Singh read with missing of Jagseer Singh. Therefore, petitioners are entitled to the relief sought in the present petition.

4.) *Per contra* learned counsel for the State has filed affidavit of one Sh. Jasmeet Singh, PPS, Deputy Superintendent of Police (Investigation), Sri Muktsar Sahib on behalf of the State of Punjab. He has

are not entitled to anticipatory bail. He has stated that SIT has been constituted for the purpose of investigation having regard to the heinous offence like kidnap and missing of some of the boys of the concerned village. In para 6 of the affidavit, it is stated that how action has been taken with reference to offences under SC/ST Act. Learned counsel for the State further submitted that decision cited by petitioner counsel supra is distinguishable having regard to the word used in the decision that inquiry may be conducted by the DSP and it is not mandatory that inquiry is required to be held. Petitioners' custody are required for the purpose of interrogation having regard to the heinous crime alleged to have been committed by them under IPC and SC & ST Act. Both petitioners and complainant are from a particular village and there is a apprehension that petitioners may threaten the complainant and tamper witness. Therefore, petitioners' claim are liable to be rejected.

5.) Heard learned counsel for the parties.

6.) Having regard to the heinous crime alleged to have been committed by the accused and others, petitioners are required for custodial interrogation. Kidnapping or missing of certain young boys are serious issues which are required to be considered by the SIT constituted by the State-respondent. Reliance on the Supreme Court decision relating to holding of inquiry by the DSP and above before taking action under SC/ST Act, para 83 (iii) reads as under:-

“(iii) In view of the acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in

appropriate cases if considered necessary for the reasons record. Such reasons must be scrutinized by the Magistrate for permitting further detention.”

Having regard to the words used “.....non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for the reasons record. Such reasons must be scrutinized by the Magistrate for permitting further detention.” it is premature to take such contention. Before arrest SSP or SIT would examine the aforesaid issue. Secondly, it is the discretion of the Investigating Officer whether to hold a preliminary inquiry or not. In other words it is not a mandatory requirement before taking any action under the SC & ST Act. Even if there is any lacuna in respect of offence under SC & ST Act, the other offence are relating to heinous crime like kidnapping and confining boys. In the present case, the nature and seriousness of the offences and apprehension of tampering with witness and threat to the complainant are to be taken into consideration. In view of these facts and circumstances, petitioners have not made out a case.

7.) Accordingly, petitions stand dismissed.

(P.B. BAJANTHRI)
JUDGE

July 25, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.