

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-37359 of 2017

Date of Decision: April 04, 2018

Davinderpal Singh and another

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioners

Mr. Kirat Singh Sidhu, DAG Punjab

Mr. L.S. Mann, Advocate
for the complainant

Sudhir Mittal, J. (Oral)

The petitioners seek grant of anticipatory bail in case FIR No. 124 dated 02.09.2017, registered under Sections 323, 452, 506, 148 and 149 IPC (Sections 326 and 459 IPC added later on) at Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

It is not in dispute that when the present petition was filed only Section 326 IPC had been added and Section 459 IPC was added during its pendency.

Learned counsel for the petitioners contends that as per the allegations in the FIR, petitioner No. 1 is alleged to have attacked injured Baljinder Kaur with his hand held Soti which hit her on the face, jaw and ear and petitioner No. 2 is alleged to have attacked the complainant Gulab Singh with a baseball bat which hit him on his head. The injury on the head of the complainant has been declared to be a simple injury whereas the injury on the ear and jaw of Baljinder Kaur has been declared to be grievous in nature. Thus, the contention is that petitioner No. 1 is

accused of having inflicted injury under Section 325 IPC whereas petitioner No. 2 is accused of an offence under Section 323 IPC having inflicted simple injury. The person who is attributed the injury under Section 326 IPC has already been granted regular bail. Regarding Section 459 IPC, it is submitted that the same is not attracted in the facts and circumstances of this case. Moreover, co-accused namely Sabar Khan has been granted anticipatory bail by this Court for the said offence. It is further submitted that pursuant to interim order dated 06.10.2017 passed by this Court, the petitioners have joined the investigation and are cooperating therewith.

Learned State counsel on instructions from ASI Avtar Singh submits that the petitioners have infact joined the investigation and that they are not needed any further.

Learned counsel for the complainant opposes the prayer for grant of anticipatory bail on the ground that the offence under Section 459 IPC is a heinous crime and it dis-entitles the petitioners for grant of anticipatory bail. Moreover, Section 459 IPC is squarely attracted in the facts and circumstances of this case and the contention of learned counsel for the petitioners is not liable to be accepted. He has placed reliance upon the judgment of Hon'ble Supreme Court of India in ***Prahlad Singh Bhati vs. N.C.T., Delhi, 2001(2) RCR(Criminal) 377*** for the purpose of contending that where a person has been granted bail and subsequently a harsher provision is added in the FIR, the fact that he had been granted regular bail earlier would not automatically entitle him to grant of bail, even after the harsher provision is added. Reliance has also been placed upon ***Tilak Raj vs. State (N.C.T.) of Delhi, 2013(7) RCR(Criminal) 3220*** to support the contention that offence under Section 459 IPC is made out in this case as well.

A perusal of the FIR reveals that 10 to 12 persons including the petitioners came into the house of the complainant at around 9.10 p.m. They were armed with dangs, sotis and swords. Then, they inflicted injuries upon the

complainant and his family members. After inflicting the injuries, all the accused sat in their respective cars and sped away while hurling threats at the complainant and his family. The question, thus, arises whether the offence under Section 459 IPC is attracted in the circumstances of this case. The said Section is reproduced herein below:-

“459. Grievous hurt caused whilst committing lurking house trespass or house-breaking.—Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

A perusal thereof shows that a person who causes grievous hurt to any person or attempts to cause death or grievous hurt to any person while committing lurking house-trespass or house-breaking is said to have committed the offence under Section 459 IPC. According to learned counsel for the complainant, house-breaking is involved in this case, therefore, Section 459 IPC is attracted. To support this contention reference has been made to clause fifthly of Section 445 IPC, according to which a person is said to commit “house-breaking” if he uses criminal force or commits assault or threatens any person with assault while effecting entry into or departure from a house. The submission is that the petitioners and their co-accused threatened the complainant and his family members with assault while departing and, therefore, the offence of house-breaking is attracted.

The allegations in the FIR have been reproduced hereinabove. It is mentioned therein that while departing, the accused persons hurled threats at the complainant and his family members. However, the same in my opinion is not sufficient to attract clause fifthly of Section 445 IPC because house-breaking in its

therefrom. Thus, the expression in clause fifthly i.e. “threatening any person with assault” is to be construed accordingly. In my view, the threat of assault should be of such nature so as to discourage the complainant from stopping the persons who are allegedly departing. Thus, in my view Section 459 IPC is not attracted *prima facie*. The judgment in *Tilak Raj (supra)* is also not helpful because in that case accused persons had concealed themselves in the house and when they were spotted by the complainant they assaulted her and then effected their exit.

It is not in dispute that the accused who is attributed the injury under Section 326 IPC has been granted regular bail by this Court. Thus, on the principle of parity the petitioners are also entitled to grant of bail for the said offence because they can be liable for the said offence only with the aid of Section 149 IPC.

The petition is allowed and the interim anticipatory bail order dated 06.10.2017, is hereby made absolute. However, it is made clear that the petitioners shall cooperate with the investigation and shall appear before the Investigating Officer as and when they are required to do so. Further, they shall be bound by the conditions enshrined under Section 438(2) Cr.P.C.

Expression of opinion hereinabove shall have no bearing on merits of the case.

April 04, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No