

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

CRM-M-38172-2017

Date of decision:- 12.1.2018

Darbara Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Navkiran Singh, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Ranvir Singh Arya, Advocate
for the complainant.

H.S. MADAAN, J.

The instant petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Darbara Singh, an accused in FIR No.531 dated 24.8.2017 for the offences under Sections 148, 149, 323, 307, 427, 506 IPC and Section 25 of the Arms Act, registered with Police Station Assandh, District Karnal.

Briefly stated, the facts of the case as per prosecution version are that FIR was recorded on the basis of a complaint submitted by complainant Rajbir Singh son of Jeetu Ram of Kashyap community, resident of village Manchuri, Police Station Assandh, which he submitted

to the police.

Inter alia, he had contended that land was allotted for school in their village since long; that there is land belonging to Panchayat on boundary of Gullarpur, which has been given on lease; that on 23.8.2017 complainant along with 20/22 persons had gone to their plots for the purpose of cleaning those, where they got information that in the disputed land of bus station, Manchuri, Sahab Singh, Ex-Sarpanch along with his brother Lakhbir Singh, Niranjana Singh sons of Khazan Singh etc. in company of 100/120 persons were present; that then they reached near bus stand, Manchuri; that in the meanwhile various persons came there from the village; that Sahab Singh son of Khazan Singh was having a pistol in his hand; Darbara Singh was having a gun, Nawab Singh was having a pistol, Lakhbir Singh was having a pistol, Sonu was carrying a pistol, Bhupender Singh, Panch was having a sword, Janpal Singh (Panch) was driving tractor, Arjun was also driving the tractor; that in the trolley attached with one of the tractors stones had been placed; that tractor trolley was being driven by Lalji, Bhupender, Panch was having a sword; that the other persons accompanying those were having swords, lathies, dandas, handles and country-made pistols and they trespassed in the land in dispute near bus stand Manchuri with an intention to get forcible possession and with intention to kill them fired from their respective weapons and they having lathies, dandas also raised *lalkaras* and gave filthy abuses, attacking the complainant with an intention to kill them; that as a result, complainant and more than 25/30 persons of their village received multiple injuries and some persons from their side had received gun shot injuries; that when the complainant and the persons

accompanying him raised noise, then all the assailants ran away from the spot extending threats to kill them. Formal FIR was registered. The matter was investigated.

Apprehending his arrest, the accused – petitioner had approached the Court of Sessions for grant of pre-arrest bail. His such request was declined by learned Additional Sessions Judge, Karnal vide order dated 26.9.2017. Later on, he approached this Court for grant of that very concession.

Notice of the petition was given to respondent – State, which has appeared through State counsel. Complainant has also appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that land in dispute had been given to Sikh community of the village for the purpose of raising construction of Gurudwara there and the complainant along with other persons trespassed in the same, therefore, the petitioner being a member of the Sikh community had every right to protect the possession and even cause injuries to the aggressors and trespassers. He has further contended that there is a counter version of the incident in which five members of the accused party had suffered injuries and one of them having been hit by gun shot. He has contended that no specific injury is attributed to the petitioner and petitioner has already joined the investigation, therefore, his custodial interrogation is not required as no recovery is to be effected from him.

Whereas learned State counsel has contended that during the

course of investigation, it transpires that as per revenue record, the land in dispute stands in the name of real owners Gurbachan Singh and others since time of partition and land is being leased out and a building of water supply was constructed there in the year 2013, whereas Rajeev Gandhi Sewa Kender (Bank) was constructed in the year 2010 and as per scheme of HRDF, a Kashyap Dharamshala was constructed during the period 2013 to 2015 and land in dispute was being cultivated by Gram Panchayat, Manchuri. Learned State counsel further contended that FIR was registered against 41 persons out of which, 14 persons have been arrested and during investigation 10 persons were found innocent. Similarly, a cross case was registered on the basis of statement of Jhirmil Singh against 34 persons specifically names besides 50-60 other persons. He has contended that the necessary details are given in the written reply filed by the State; that investigation is going on, however, the petitioner has not co-operated in the investigation in a proper manner and has concealed material facts, therefore his custodial interrogation is required. He has contended that vide resolution dated 24.4.2017, the Panchayat had permitted the Sikhs to construct a Gurudwara Sahib though vide resolution dated 28.4.2017, the Gram Panchayat decided that land should be auctioned. It is submitted that the land comprised in Khewat No.483 of village Manchuri does not belong to Gram Panchayat.

After hearing rival contentions of the parties, I find that only during the trial it can be determined as to which persons was in actual physical possession of the plot at the spot, which of the party was aggressor and whether the petitioner was justified in firing shots from his gun allegedly exercising rights of private defence of person and property.

Though there is cross version of the incident also but as the things stand, custodial interrogation of the petitioner is found to be necessary for complete and effective investigation since the State counsel has stated that though the petitioner has joined the investigation in terms of the direction issued to him by this Court but during the period of interim bail, he has not rendered full cooperation.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

12.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No