

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

CRM-M-40123-2017 (O&M)

Date of decision:06.03.2018

Maginder Singh @ Gaggi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. M.S. Basra, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

Mr. Vivek Gupta, Advocate for the complainant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

This order shall dispose of the instant petition filed under Section 438 Cr.P.C. seeking concession of pre-arrest bail to the petitioner in case FIR No.18, dated 09.05.2017, under Sections 342/323/308/325/34 IPC (Section 452 IPC deleted later on), registered at Police Station Sri Hargobindpur, District Gurdaspur.

Counsel for the parties have been heard at length.

FIR came to be registered on the statement of Amrik Kaur in relation to an alleged occurrence during the late evening hours of 04.05.2017. Complainant asserted that her husband Kuldeep Singh and his brother, namely, Baljit Singh were doing farming but subsequently the agricultural land was partitioned. Precise allegations are that the present petitioner, who is none other than nephew of Kuldeep Singh had entered the bedroom of the complainant and had given bat blows on the person of Kuldeep Singh as also the complainant. As per complainant's version,

certain relatives had arranged a vehicle and taken them to Civil Hospital, Batala. Thereafter, husband of the complainant, namely, Kuldeep Singh was taken for treatment to Fortis Hospital, Amritsar.

During the course of arguments, it has gone uncontroverted that offence under Section 452 IPC has been deleted.

It is the contention raised by counsel representing the petitioner that deletion of offence under Section 452 IPC would itself create a serious dent in the complainant's version.

At this stage, learned State counsel as also counsel representing the complainant would urge that Section 452 IPC has been deleted on the basis that the accused as also complainant party were sharing a common residence.

In such regard, it would suffice to observe that even as per version of the complainant and which is reflected in the FIR, it was asserted that even though there is a common entrance gate and common boundary wall yet there were two separate portions.

The contention and submission made by counsel for the petitioner as regards deletion of Section 452 IPC cannot be stated to be without merit.

During the course of arguments, learned State counsel has not produced any MLR in respect of Kuldeep Singh and neither medical record/ material reflecting Kuldeep Singh to have been referred by Civil Hospital, Batala to a private hospital in Amritsar.

The offence under Section 308 IPC was added almost one month after the alleged occurrence.

It stands conceded by learned State counsel upon instructions

from HC Harwinder Singh that the petitioner in pursuance to the order dated 12.01.2018 has joined investigation.

Under such peculiar circumstances, this Court is of the considered view that custodial interrogation of the petitioner would not be warranted.

Petition is allowed. Order dated 12.01.2018 passed by this Court is made absolute.

It is, however, clarified that the observations made by this Court are confined only as regards the prayer for grant of pre-arrest bail and would have no bearing on the merits of the case.

Disposed of.

06.03.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |