

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

CRM-M-42510-2017

Date of decision:-5.2.2018

Shalu and another

...Petitioners

Versus

State of Haryana

...Respondent

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

Present: Mr. D.K. Prajapati, Advocate
for the petitioners.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

The instant petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by petitioners Shalu, aged about 20 years and Ravi, aged about 21 years, both of them being accused in FIR No.145 dated 27.4.2017, under Sections 323, 324, 307, 120-B, 34 IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 (for short – *the Act*), registered at Police Station KUK, District Kurukshetra.

Briefly stated, facts of the case as per prosecution story are that FIR was recorded on the statement of complainant Pooja daughter of Mahavir Singh belonging to Harijan community, resident of Didar Nagar, Narkatari Road, Kurukshetra aged about 18 years, which she made to the police in which she stated that she has appeared in 10+2 examination; that she has been on visiting terms with her friend Shalu (present petitioner No.1) daughter of Sunil Kumar residing in her neighbourhood; that Shalu would tell her that her friend Ravi (present petitioner No.2) son of Roshan Lal, resident of Model Town, Pehowa wanted to have friendship with her but she refused that proposal; that about 10/12 days earlier Shalu has told her that she would send friendship request on the facebook and after that Ravi would also send such request; that though requests sent by both of them had come to her but she refused to accept the same and rather according to complainant, she had blocked number of Ravi; that on 27.4.2017 while she was going to take medicine and reached near 3rd gate, Shalu met her requesting her to give lift up to Brahmsarover; that accordingly the complainant allowed Shalu to pillion ride her scooter and both of them reached Brahmsarover, where the complainant parked her scooter; that they reached at Devyani Ghat, where they found Ravi standing there; that Shalu said to the complainant that she should make friendship with Ravi and Ravi tried to put wrist watch on her arm but the complainant refused, at which Ravi became angry, took out a knife from his trouser and gave a blow of knife on her neck with an intention to kill her; that when the complainant tried to raise alarm, then Shalu gagged her mouth; that thereafter Ravi gave blow of knife, which landed upon her

right ear, shoulder and fingers; that the complainant managed to free herself and raised hue and cry; that on seeing several persons rushing to the spot, both the accused ran away from the place of incident. The complainant injured was taken to LNJP Hospital for treatment, where she was medico legally examined and thereafter was referred to PGI, Chandigarh. However, she was taken to Aggarwal Hospital. On the basis of statement of complainant, formal FIR was registered.

Apprehending their arrest in this case, the petitioners - accused had approached the Court of Sessions seeking grant of pre-arrest bail but their such application was dismissed by the Court learned Sessions Judge, Kurukshetra vide order dated 3.11.2017. As such they have approached this Court asking for similar relief.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioners has referred to *Jagir Chand Versus State of Punjab, 2002(4) R.C.R.(Criminal) 445*, *Mukesh Kumar Saini Versus State (Delhi Administration), 2002(1) R.C.R.(Criminal) 242* and *Paracha Mohan Rao Versus The State of Andhra Pradesh, 2014 (7) R.C.R.(Criminal) 1272*.

Pre-arrest bail is such a relief, which is to be granted in exceptional circumstances and not in routine. Here the allegations against the petitioners are quite serious and grave. Petitioner Shalu had taken the complainant to the place of incident by making a misrepresentation where when the complainant rejected the proposal of the accused to have friendship with Ravi, Ravi had attacked the complainant with a knife,

which he took out from his trouser giving blows on her neck, right ear, which are very sensitive and vital parts of the body besides on other places, whereas Shalu had gagged the mouth of the complainant, which goes to show that both the accused had done prior planning to catch hold of the complainant and cause injuries to her. The complainant belongs to schedule caste community and the accused have been booked for offence under Section 3 of the Act also. Section 18 of the Act clearly provides bar to grant of pre-arrest bail in a case registered under Section 3 of the Act. Section 18 of the Act reads as under:

Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

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 petitioners is definitely required for complete and effective investigation. Though the petitioners have joined the investigation but as stated by the State counsel, they have not rendered full cooperation. In case custodial interrogation of the petitioners 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.

The act and conduct of both the petitioners clearly debar them from discretionary relief of pre-arrest bail.

As regards the authorities referred to by learned counsel for the petitioners, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

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

5.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No