

**Sr. No.101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-47641-2018
Date of decision:16.11.2018

Darshan Singh and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. G.S.Gora, Advocate for
Mr. J.T.Singh, Advocate
for the petitioners.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for seeking anticipatory bail in FIR No.109, dated 23.05.2017 for the offences punishable under Sections 379 and 436 IPC registered at Police Station Mukerian, District Hoshiarpur.

The complaint against the petitioners is that the Complainant had purchased the land measuring 5 Kanals 15 Marlas, which is the land in question in the present case, from Smt. Karam Kaur wife of Didar Singh. Thereafter, the Complainant had entered into an agreement to sell with the present petitioners. However, the petitioners did not get the sale deed executed by making the payment of the balance amount. Since the possession was handed over to the present petitioners under the agreement to sell, therefore, after the petitioners failed to get the sale deed registered, they were required to return the possession to the Complainant. However, they did not surrender the possession to the Complainant. Resultantly, civil suit was filed by the Complainant. The same was decreed and warrant of possession in favour of the Complainant was issued by the civil court. In execution of the court orders; the possession was handed over to the Complainant way back in the year 2015. Since then the Complainant had

been cultivating the land in question. However, on 14.04.2017 respondents were found cutting the sugarcane crop of the complainant sown on the land in dispute. Complainant tried to stop them. However, on the next day i.e., 15.04.2017 the petitioners set on fire the remaining sugarcane crop as well. With these allegations, the FIR was lodged.

Learned counsel for the petitioners has submitted that the petitioners are in possession of the land mentioned in the FIR. However, on the specific query from the Court, learned counsel has not been able to clarify as to how they are in possession of the land involved in the FIR after the possession of the same was handed over to the Complainant, through the process of the Court. The only submission made by the counsel for the petitioner is that the decree, under which the possession was handed over to the Complainant, has been challenged by the petitioners through another suit. However, he has not disputed the fact that there is not stay even against that decree. Still further he has not pointed out anything, even to remotely suggest that possession was ever handed over back to the petitioners; by any Court of Competent jurisdiction.

In view of the above, it is quite clear that the petitioners are not having any regard even for the process of the Court. Despite the Complainant being owner and being in lawful possession of the land, the petitioners are still trying to deprive the Complainant of the benefits; to which the Complainant is legally entitled. There is nothing on the file to suggest that the crop in question has not been taken away or put on fire by the petitioners. Rather the petitioners are, indirectly, admitting the incident by only claiming that it was their crop; because they are in possession of the land in dispute.

It is settled law, as held by the Hon'ble Supreme Court, that the interrogation of an accused by the police, when he is protected by the Court Order is qualitatively and quantitatively different than the interrogation; when the accused does not have the sense of protection by the Court Order. Of course, the accused, as an individual, has right to life and liberty, however, that right to life and liberty can very well be curtailed; as per the procedure prescribed by law. In case of an investigation against the accused, the ordinary procedure prescribed by law is that the Investigating Officer of the case can even arrest a person without warrant. However, to protect a person from un-due harassment at the hands of police, an extraordinary power has been conferred upon the Court under Section 438 Cr.P.C to grant an anticipatory bail to an accused. But this power can be exercised by the Court only in case the Court is convinced of extenuating circumstances, leading predominantly, towards the innocence of the accused, coupled with the fact that in case the accused is granted protection against his arrest, the investigation by the police would not be unduly hampered.

In the facts and circumstances of the present case, this Court does not find any extenuating circumstance requiring the Court to interfere in favour of the petitioner. Still further, this Court is of the view that if the petitioner is granted any protection at this stage, the same would hamper the police from conducting the investigation in its right earnest.

In view of the above, finding no merit in the case, the same is dismissed.

16th November, 2018

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE