

S.No.103

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

CRM-M-54992 of 2018 (O&M)

Date of Decision:14.12.2018

Harmesh Singh @ Meshi

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Anantdeep Singh Sandhu, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a second petition filed by the petitioner seeking anticipatory bail in case FIR No.17 dated 10.02.2018 registered under Sections 452, 324, 323, 148, 149 IPC (Sections 307, 326 IPC added later on) at Police Station Dharamkot, District Moga.

After having argued for some time, when the Court was not agreed with the counsel for the petitioner, the earlier petition filed for anticipatory bail was dismissed as withdrawn so as to seek regular bail from the appropriate Court. However, now by changing the counsel, the present second petition has been filed for the same purpose.

The facts giving rise to the FIR in question are that the petitioner along with 7-8 other persons is alleged to have attacked the husband of the complainant and her family members. In that fight, injuries have been caused to several persons; including the husband of the complainant. Injuries; as well as; weapons used by respective accused have been specified in the FIR. As per the allegations in the FIR, the petitioner is alleged to have caused sword blow on the head of the husband of the complainant, resulting into a grievous injury. Accordingly, the FIR has come into being.

Counsel for the petitioner has submitted that earlier qua this very incident, the parties had entered into a compromise. However, now the complainant has backed out of the compromise. It is further submitted that the petitioner is ready to join the investigation.

Having heard the learned counsel for the petitioner and perused the file, this Court is of the considered opinion that it would not be appropriate to grant anticipatory bail to the petitioner. There are direct allegations against the petitioner; as having caused head injury to the husband of the complainant. The injury has been declared to be grievous in nature. As per the allegations, the injury is alleged to have been caused with sword. Hence, the role of the petitioner is well defined in the FIR itself. The Police is yet to investigate the case. Since the petitioner is alleged to have used the particular weapon of offence, the Police would need to recover from the petitioner the weapon of offence as well. It is well settled law; as laid down by the Hon'ble Supreme Court; that the custodial interrogation is qualitatively and quantitatively different than the interrogation which is conducted upon the accused when he has the sense of protection of the Court order. If the petitioner is granted any protection against the arrest, the Police may face problems in properly investigating the case. Hence, any such order of protection in favour of the petitioner is bound to impede fair investigation by the Police.

Of course, the accused as an individual has a right to life and liberty. However, the right to life and liberty can very well be curtailed by the procedure prescribed by the law. In case of the investigation of a crime, the ordinary procedure prescribed by law is that the Investigating

Officer can even arrest a person without a warrant. However, to protect an innocent person from prosecution and harassment at the hands of the Police, the Courts have been conferred extra-ordinary power by Section 438 Cr.P.C., and this power is so extra-ordinary that this is not even available in some parts of country and also qua some offences under some special penal statutes. But, this power has to be exercised only if there are extenuating circumstances leading, predominantly, towards the innocence of the accused; coupled with the fact that in case the petitioner is granted the interim protection then the investigation by the Police would not be unduly hampered.

In the present case, the Court does not find any extenuating circumstances leading towards innocence of the petitioner vis-a-vis the allegations in the FIR, at this stage. Therefore, this Court does not find any ground to interfere and to protect the petitioner; by exercising its power under Section 438 Cr.P.C.

Dismissed.

December 14, 2018

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(RAJBIR SEHRAWAT)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No