

S.No.108

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

CRM-M-7626 of 2019 (O&M)

Date of Decision:20.02.2019

Satgur SinghPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. P.S. Dhaliwal, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.104 dated 11.08.2018 registered under Section 380, 357 IPC at Police Station Rampura City, District Bathinda.

The FIR in this case was registered on the statement of Gurcharan Singh son of Sadhu Singh, J.E., PSPCL Sub Division Rural Rampura in which it was alleged that 20 kilometer Aluminum conductor thin wire 'vision' and 1200 meter Aluminum conductor thick wire 'Revat' and two computer sets have been stolen by some unknown persons by breaking the locks of store of the Corporation. On these allegations, the co-accused of the petitioner were arrested. It was disclosed by the arrested co-accused that, in fact, it was the present petitioner and one Babbu, who had committed this theft. They had engaged the co-accused for loading the material from the store of the Corporation and for unloading the same at other place. At the instance of the said co-accused of the petitioner, the wires have been recovered. However, the computers and the other materials are yet to be recovered by the Police.

Learned counsel for the petitioner had submitted that the computers are alleged to have been stolen on 03.08.2018 and the wires are alleged to have been stolen on 05.08.2018. However, the matter regarding the stealing of computers was not reported to the Police immediately. It is further submitted that the wires have already been recovered from the co-accused. Therefore, nothing is to be recovered from the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

However, in view of the facts and circumstances mentioned above, this Court does not find any mitigating circumstances to lead this

Court to exercise its power under Section 438 Cr.P.C. The facts, as mentioned in the FIR, do, prima facie, indicate the participation of the petitioner in the theft. The stolen property is yet to be recovered. So it cannot be said that the petitioner is, ex facie, innocent. Still further, if the petitioner is protected against the arrest, then the investigation of the case would be unduly hampered. The police would not be able to decipher the scope and dimension of the alleged crime.

In view of the above, but without commenting any further on merits of the case, the present petition is dismissed.

February 20, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No