

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

**Criminal Misc. No. M-42630 of 2018 (O&M)
Date of decision: 07.03.2019**

Palwinder Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Jaspreet Kaur Somal, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Mr. Dilraj Singh, Advocate
for the complainant.

Daya Chaudhary, J.

Petitioner-Palwinder Singh, who is accused in FIR No.0236 dated 14.11.2017 registered under Sections 452, 307, 506 read with Section 120-B IPC at Police Station Phase-1, SAS Nagar, Mohali, Punjab, has filed the present petition under Section 438 Cr.P.C. for grant of anticipatory bail to him.

Learned counsel for the petitioner submits that the present FIR is the counter blast of FIR No.0075 dated 02.10.2017 registered under Sections 302, 323 read with Section 34 IPC at Police Station Balongi, at the instance of the petitioner as his mother was killed by the complainant party. The present FIR was registered against petitioner and Sunny and four other unknown persons, who were present at the place of occurrence with muffled

faces and none of them could be identified. Learned counsel further submits that the case is based on circumstantial evidence. Co-accused of the petitioner, namely, Sukhveer Singh @ Sukha was released on interim bail by this Court vide order dated 04.04.2018 passed in CRM-M No.13716 of 2018, which has also been confirmed. The petitioner is ready to join investigation and nothing is to be recovered from him.

Learned State counsel as well as counsel for the complainant have opposed grant of anticipatory bail to the petitioner on the ground that while issuing notice of motion on 27.09.2018, wrong facts were mentioned that no role was attributed to the petitioner and it was a case of simple injury whereas it was a case of fracture on the person of the injured. They further submit that the petitioner cannot claim parity with his co-accused, who have been released on regular bail as it was clearly mentioned in the order passed by the Additional Sessions Judge that there was a fracture in the leg of the complainant-injured and copy of x-ray film showing fracture was produced. It was reflected in the CCTV footage that some persons armed with naked swords attacked upon the complainant as it was a case of previous enmity between the parties because of land. They also submit that the petitioner has not approached this Court with clean hands as at every step, efforts have been made to mislead the Court and to conceal the material facts and the present petition is liable to be dismissed on the ground of misrepresentation and concealment of material facts.

Learned counsel for the complainant on the basis of reply submits that initially wrong statement was made by learned counsel for the petitioner and subsequently, an application has been moved for correction of

certain facts, which is deliberate and has intentionally been moved to mislead the Court. Learned counsel for the complainant further submits that the petitioner is indulged in a number of cases of similar nature. While issuing notice of motion on 27.09.2018, it was submitted by learned counsel for the petitioner that three of the co-accused, namely, Sunny, Randhir Singh and Amandeep Singh were released on regular bail whereas Amandeep Singh was not released on regular bail and his anticipatory bail application was rejected by the Additional Sessions Judge, Mohali on 14.02.2018 and he was evading his arrest. Said Amandeep Singh filed CRM-M No.45422 of 2018 before this Court after approximately 15 days of passing of above said order and the case was listed for hearing for the first time on 15.10.2018. These facts were also recorded in order dated 15.10.2018 while hearing anticipatory bail petition of Amandeep Singh by the Court. Learned counsel for the complainant also submits that as per Ortho and Radiological opinion, injury No.3 was declared grievous by the Medical Officer, Civil Hospital, Mohali. It has also been brought to the notice of this Court by learned counsel for the complainant that even the application for correction was moved after a gap of 51 days. Even counsel for the petitioner failed to produce inquiry report before the lower Court to show that the petitioner was declared innocent in the inquiry marked by SSP Mohali to DSP Crime, Mohali. Thereafter, the petitioner himself conceded that the said inquiry was still pending with SSP Mohali and was not finalized. The misstatement was duly recorded in the order passed by the Additional Sessions Judge on 16.07.2018. Even a wrong contention was recorded that FIR under Section 302 IPC was registered at the instance of

the petitioner whereas Section 302 IPC was deleted by the Police during initial investigation and it was replaced by Section 304 IPC, which has also been deleted subsequently by the Police on 03.11.2018.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

As per contention recorded at the time of issuing notice of motion, the present FIR was stated to be the counter blast of FIR registered under Section 302 IPC along with other sections at the instance of the petitioner as his mother was killed by the complainant party and the case is based on circumstantial evidence. It has been brought to the notice of this Court by learned counsel for the complainant that an application for correction was moved by learned counsel for the petitioner subsequently as certain wrong facts were mentioned in the petition as well as in the contention and reply thereof was also filed, which is on record. A wrong contention was made at the time of issuing notice of motion that co-accused of the petitioner, namely, Sunny, Randhir Singh and Amandeep Singh were released on regular bail whereas Amandeep Singh was not released on regular bail and his anticipatory bail application was rejected by the Additional Sessions Judge, Mohali on 14.02.2018 and he was evading his arrest. Said Amandeep Singh filed CRM-M No.45422 of 2018 before this Court after approximately 15 days of passing of above said order and the case was listed for the first time on 15.10.2018. It is a case of misrepresentation of facts, which is mentioned in the application filed by the petitioner where correction of certain facts was sought. A wrong

contention was also made by learned counsel for the petitioner that the case is based on circumstantial evidence and the injury was simple whereas it was a case of fracture.

It is well settled proposition of law that misrepresentation itself amounts to fraud. A frequent misrepresentation, which appears to be false with ulterior motive, is bad in law. Moreover, when deliberate fraud is played with a motive to secure something, it amounts to abuse of process of law as has been held by the Delhi High Court in *Seemax Construction (P.) Ltd. vs. State Bank of India, AIR 1992 Delhi 197* and Hon'ble the Apex Court in *Ram Chandra Singh vs. Savitri Devi, (2003) 8 SCC 319*.

Accordingly, the petitioner does not deserve concession of anticipatory bail and the petition being devoid of any merit is, hereby, dismissed.

07.03.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No