

Sr. No.102

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

CRM-M-23432-2019(O&M)
Date of decision:22.05.2019

Kewal Singh

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Abhishek Yadav, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.78, dated 03.12.2018 under Sections 186, 353, 332, 224 IPC registered at Police Station Rawalpindi, Phagwara, District Kapurthala.

FIR in the case came into being on the statement of one ASI Partap Singh of Himachal Pradesh police, who stated that he was posted at Police Station Sadar, Una, Himachal Pradesh and was investigating officer of the case. The Court at Una had issued warrants of arrest against brother of the present petitioner Sohan Lal Bhardwaj on 07.02.2018. To execute the said warrant, the above said ASI Partap Singh had gone to the village Rihana Jattan, Tehsil Phagwara, District Kapurthala. After reaching the village, he reached the house of Sarpanch Parveen Kaur and told about the warrants of arrest issued against Sohan Lal Bhardwaj by Court of law. The Sarpanch sent the Chowkidar of the village with the above-said police officer to the house of the accused Sohan Lal Bhardwaj. After reaching the house of the said Sohan Lal Bhardwaj, the complainant knocked the door

and the said Sohan Lal opened the door of his house and asked the complainant to sit down so that he could bring some water. The identity of the police officer was also duly disclosed to him. But by dodging the police officer, the said Sohan Lal tried to slip away from the spot. Then police party captured the said Sohan Lal. However, Sohan Lal called one Rajwinder Kaur, wife of ex-Sarpanch of the village as well as husband of the present Sarpanch of the village. Thereafter, the said Sohan Lal insisted on leaving him and not to arrest him. Then the said police officer expressed his helplessness; saying that he could not leave Sohan Lal because he is executing the warrants issued by the Court of law. In this process, when the police party had taken the Sohan Lal in custody, then his family members, including his brother Baljinder Singh and the present petitioner Kewal Singh; as well as their wives; all surrounded the police party and they started quarreling with the police personnel. When the police personnel resisted, then these family members started giving beating to the police party. These persons got the said Sohan Lal released from the police custody and made him run away. The police personnel also suffered injuries in this incident. With these allegations, the FIR was got lodged by above-said ASI Partap Singh.

While arguing the case, learned counsel for the petitioner submits that Complainant-police officer had not disclosed his identity. Since Sohan Lal Bhardwaj was not at his house, therefore, the police personnel tried to abduct the wife of above-said Sohan Lal. In protest thereof, the petitioner and the other family members of Sohan Lal had interfered in the matter. Therefore, no offence as alleged in the FIR was committed.

Having heard the learned counsel for the petitioner and

perusing the case file, this Court does not find substance in the argument raised by learned counsel for the petitioner.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country and qua some offences under special statutes; in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

As is evident from the facts alleged in the FIR, the police party had gone there only to execute the warrants issued against Sohan Lal Bhardwaj, who was accused in an FIR, and against whom a Court of law had issued warrants of arrest. Therefore, neither there is any indication in the FIR that identity was not disclosed by the police personnel nor they had any reason or occasion not to disclose their identity. The fact that they had not concealed their identity is also reflected from the fact that the police party, in the first instance, reached the house of the Sarpanch of the village and thereafter, even the chowkidar of the village was taken by the police

party, who had taken the police personnel to the house of the said Sohan Lal. Hence, the argument of learned counsel for the petitioner that the police party had not disclosed their identity is totally concocted.

Still further, the allegation that the police party tried to abduct the wife of the said Sohan Lal is totally misconceived, besides being absurd. As is obvious from the facts, the police party was not on a spree of arresting anybody in connection with some ambiguous information of crime. The police party was at the house of Sohan Lal with a specific warrants of arrest against a specific person. Therefore, there is no question of police party attempting to abduct the wife of the accused Sohan Lal. Otherwise also, the argument of learned counsel for the petitioner itself shows that the accused/petitioner and his family members are not even denying the incident of obstructing the police personnel in discharge of their duty. On the contrary, the plea has been put forward to defend the said action. However, the said plea is not supported either by any circumstances or even by the human logic.

In view of the above, at this stage, this Court does not find any mitigating circumstances showing ex-facie innocence of the accused, vis-a-vis the allegations levelled against him. Hence this Court finds itself unable to exercise its power under Section 438 Cr.P.C; so as to grant anticipatory bail to the petitioner. Otherwise also, the allegations are so closely intermingled and collectively alleged that if the petitioner is granted protection against arrest then the police would not be able to unearth the true dimensions of the conspiracy and the crime committed by the petitioner and his family members. Therefore, to release the petitioner on anticipatory bail would hamper the free and fair investigation of case.

Hence, finding no merit in the petition, the same is dismissed.

22nd May, 2019

Shivani Kaushik

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

[RAJBIR SEHRAWAT]

JUDGE