

**S.No.104**

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

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**CRM-M-31819 of 2019 (O&M)**

**Date of Decision:25.09.2019**

**Gurtej Singh alias Baltej Singh**

**.....Petitioner**

**Vs.**

**State of Haryana**

**.....Respondent**

**CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. Amandeep Chhabra, Advocate  
for the petitioner.

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**Rajbir Sehrawat, J.(Oral)**

This is a petition seeking grant of anticipatory bail to the petitioner in case FIR No.42 dated 26.02.2019, registered under Sections 392, 379-A, 34 IPC and Section 25 of Arms Act at Police Station Sadar Dabwali, District Sirsa.

The FIR in the present case came on the statement of Jaswinder Kumar son of Hans Raj; in which it was stated by him that on 26.02.2019 at about 1:30 p.m., he was going to Rajpura Majra via Sukera Road on his motor-cycle. After going about 2 kilometers away from Jandwala, one car of white colour, which was not having any registration number plate, reached there. In the said car, four boys were there. They stopped the car in front of the motor-cycle of the complainant. Out of the car, three boys came out and out of them, one boy pointed pistol on the head of the complainant. Thereafter, by threatening with death, the boys snatched mobile phone, Rs.2,000/- and one gold ring from the complainant. It was further stated that the boy sitting in the car was saying to them to shoot the complainant, lest he should disclose anything to anybody. However, after snatching the items, they fled away.

It is contended by counsel for the petitioner that the petitioner

is not named in the FIR. It is further contended that there is no other case against 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, this power is not available even 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.

In the facts and circumstances of this case, this Court does not find any substance in the arguments of the learned counsel for the petitioner. The allegations in the FIR pertain to the serious offence of threatening with death and snatching money and belongings from the complainant. Since the complainant was not even knowing anybody, out of the four boys,

there is no question of FIR naming any person. Therefore, the petitioner cannot take advantage of the fact that the petitioner was not named in the FIR. However, during the investigation the co-accused of the petitioner were arrested in another FIR. They have disclosed the entire story to the Police. The name of the petitioner has come in their disclosure statements. Not only that, out of the persons who have been arrested, two co-accused have already been identified by the complainant; as well. Therefore, this Court does not find any mitigating circumstances showing, ex-facie innocence of the petitioner, qua the allegations levelled against him. Hence, this Court does not find this to be a case fit for granting anticipatory bail to the petitioner.

Even the assertion of the petitioner that he is not involved in any other case is factually incorrect. Undisputedly, the petitioner is involved in one more case; of similar nature. Not only this, even the recovery of the material; allegedly snatched from the complainant; may have to be effected from the petitioner. Therefore, this Court is of the view that if the petitioner is granted any anticipatory bail at this stage; that would hamper the free and fair investigation of the case by the Police.

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

September 25, 2019  
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( RAJBIR SEHRAWAT )  
JUDGE

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |