

**Sr. No.104 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M-35147-2019  
Date of decision:28.08.2019**

**Sanjeev Kumar @ Happy**

**.....Petitioner**

**versus**

**State of Punjab**

**.....Respondent**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. Sandeep Gors, 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.182 dated 25.08.2018 under Sections 302, 506, 148, 149 IPC, registered at Police Station Jandiala, District Amritsar Rural.

FIR in the present case came into being on the statement of Vijay Kumar Malhotra; in which it was stated that on 24.08.2018 at about 9:30 PM there was a function at his house on the occasion of birthday of his daughter-in-law. When most of the guests were yet to reach, his nephew Honey Malhotra was away from house and he had an altercation with Rishal Saini. Due to programme at house, the nephew of the complainant came back to home. However, after 10-15 minutes, one Sanjeev Kumar @ Lovely, the present petitioner Sanjeev Kumar @ Happy and other named persons, armed with their respective weapons reached the house of the complainant. All these persons started abusing the complainant. In the mean-time, one of the guest Amarjit Singh and another guest Kulwinder Singh @ Kinda reached for the function in their Breeza Car. On seeing all these persons, the accused persons, including the present petitioner attacked the nephew of the complainant, as well as the guests. In the process, the

injuries were caused to the above-said Kulwinder Singh @ Kinda; by all the accused. Against the present petitioner, it is alleged in the FIR that when Kulwinder Singh @ Kinda fell down on account of injury which had been caused by the co-accused then Sanjeev Kumar @ Happy; the present petitioner; caused a blow with ice-pick on the head of the said Kulwinder Singh @ Kinda. Thereafter, another accused also caused injuries to said Kulwinder Singh @ Kinda and other persons. The injured were taken to the hospital. However, Kulwinder Singh @ Kinda succumbed to the injuries. With these allegations, the FIR under Section 302 IPC came into being against the petitioner and his co-accused.

While arguing the case on behalf of the petitioner, learned counsel for the petitioner has submitted that the matter was inquired into through a specially constituted Special Investigation Team(for short, 'SIT'). The SIT has found seven persons out of 10 to be innocent, though named by the complainant. Therefore, the version of the complainant is not reliable as such. Hence, the allegations levelled by the complainant against the petitioner can not be believed. It is further submitted that the medical report has found only two injuries on the body of the deceased and two accused have already been arrested in the case. Therefore, there is no scope of involvement of third person in the case. It is further submitted by the counsel for the petitioner that the SIT had recorded the statement of wife, son and brother of the deceased. However, in their statement before SIT the son and the brother of the deceased have not fully supported the case of the complainant.

Having heard the learned counsel for the petitioner and after perusing the case file, this Court does not find any substance in

the arguments of 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; it is not available throughout the 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.

In the present case, undisputedly the petitioner is specifically named in the FIR. He is alleged to be armed with specific weapon of offence. Specific injury is attributed to him. Therefore, the facts of the case do not make out any mitigating circumstances, showing any ex-facie innocence of the petitioner, vis-a-vis the allegations levelled against him. Therefore, this Court does not find this case to be the one where Court should exercise its extraordinary powers to protect the petitioner against his arrest.

Although the counsel for the petitioner has submitted that SIT has found seven named accused to be innocent out of 10 mentioned by the

complainant, however, that itself can not be ground to presume that the petitioner was not involved in the case. Still further, although the counsel for the petitioner has submitted that only two injuries have been found on the body of the deceased as per the MLR and two persons have already been arrested, however, even this can not be a ground for absolving the petitioner as such, particularly, when he is; specifically, named by the complainant and specific blow is attributed to the petitioner as having been given to the deceased. Still further although the counsel for the petitioner has submitted that the son and the brother of the deceased has not fully supported the case of the complainant, however, admittedly, even these two witnesses have not stated before the police that the petitioner was not the person who was not present there. Therefore, even these witnesses, relied upon by the petitioner; have not ruled out the presence of the petitioner at the place of occurrence and his participation in the crime. Otherwise also, it is too premature to draw any conclusion qua the petitioner, when the petitioner is yet to join the investigation.

Since the offence involved in this case is very serious and there are specific allegations and the petitioner has not even been exonerated by the Investigating agency, therefore, in the considered opinion of this Court, if the petitioner is protected against his arrest at this stage, then the same shall; definitely; hamper the free and fair investigation on the part of the investigating agency.

In view of the above, this Court finds no merits in the petition and the same is dismissed.

**28<sup>th</sup> August, 2019**

Shivani Kaushik

*Whether speaking/reasoned*

*Whether Reportable*

*Yes/No*

*Yes/No*

**[RAJBIR SEHRAWAT]**

**JUDGE**