

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

CRM-M No.35937 of 2019 (O&M)
DATE OF DECISION : 16th SEPTEMBER, 2019

Hira Lal

.... Petitioner(s)

Versus

State of Punjab

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. D. S. Pheruman, Advocate for the petitioner.

Mr. K. S. Aulakh, Deputy Advocate General, Punjab.

Mr. Vipin Mahajan, Advocate for the complainant.

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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.96 dated 13.05.2019 registered under Sections 307, 342, 201, 148 & 149 IPC at Police Station Civil Lines Batala, Police District Batala, District Gurdaspur.

The FIR in this case was registered on the complaint made by Paramjit Kaur, the mother of the injured. It was stated in the FIR that on 12.05.2019, at about 7.30pm the complainant and her son Harpreet Singh @ Raman were present at their house. At that time; the petitioner along with six more persons, named in the FIR, entered in the house of the complainant. Then co-accused Anju raised lalkara to teach a lesson to Harpreet Singh. Thereafter, in the presence of complainant herself, the accused caused injuries to the son of the complainant; on head as well as

on other parts of the body; with the weapons carried by them in their hands. When the complainant tried to intervene to save her son, then co-accused Bunti pushed her and threw her inside the room. Thereafter they locked the complainant inside the house and picked up the injured son of the complainant. When locked inside, she also heard the accused saying that they would convert the case into an accident case and would get the injured admitted in the hospital to show it as an accident case. Thereafter, the other son of the complainant, Gurpreet Singh returned home. He opened the door of the house where she was locked. It is only thereafter, the complainant and her son Gurpreet Singh came to know about and reached the hospital where the injured son of the complainant was admitted to ICU. At the hospital also, she came to know that it is the present petitioner who had taken the injured to the hospital but leaving her injured son at hospital, the petitioner and co-accused had gone away. With these allegations the FIR was registered under Sections 307, 342, 201, 148 & 149 IPC.

It is contended by the learned counsel for the petitioner that the case against the petitioner is concocted for political reason because the petitioner is the Councilor of the area. The candidate of the ruling party of the State, Sh. Ashwani Sikri, who was defeated in the election of the MLA, was nursing grudge against the petitioner. It is only at his instance that the present case has been registered; by converting an accident case into a case of assault. In fact, it was a case of accident. Being Councilor of the area, the petitioner himself had taken the injured to the hospital. He had even spent ₹10,000/- from his pocket to help the injured and for getting him treated. But subsequently, the mother of the

injured has been instigated and induced by the above said Ashwani Sikri to take stand against the petitioner and to get registered the FIR, as mentioned above. Hence, it is submitted that since the case against the petitioner is false, therefore, the petitioner deserves the concession of anticipatory bail. It is further submitted that the co-accused of the petitioner have already been granted concession of anticipatory bail.

On the other hand, counsel for the State, being instructed by ASI Palwinder Singh, submits that the petitioner is directly involved in this case. It is further submitted that the injuries caused to the injured Harpreet Singh have been declared as dangerous to life. Still further it is submitted that the injuries suffered by the injured Harpreet Singh are on vital part of the body. So far as the other co-accused are concerned, it is submitted by the counsel for the State that in the supplementary statement, the injured has named the petitioner as a main accused and has stated that it is the petitioner; who gave head injury to the injured. The police are yet to recover the weapon of offence.

Referring to the photographs of the injuries suffered by the injured Harpreet Singh, the counsel for the complainant, has pointed out that the nature of the injuries itself shows that the petitioner had an intention to kill the injured. Still further, it is submitted that there have been several other criminal cases against the petitioner earlier. It is also submitted that since the injuries caused to the injured-Harpreet Singh, on the face of it, are dangerous to life, therefore, the petitioner do not deserve concession of anticipatory bail.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be

curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, this court is of the *pram facie* opinion that the injuries suffered by the injured, as is evident from the photographs, are not the injuries, which can be suffered in an accident. The main injury is a straight and a long cut on about middle of the head. On appearance itself it is an injury resulting from a sharp edged weapon. Still further, there is specific allegation against the petitioner, by the eye witness as well as the injured himself qua the injuries caused by him. The facts, as enumerated in the FIR and as has come on record, do not disclose any mitigating circumstance, showing ex-facie innocence of the petitioner vis-à-vis the allegation as leveled against him. Therefore, this court does not find the present case to be a

case where it should exercise power under Section 438 Cr.P.C. so as to protect the petitioner against his arrest.

Still further, it is evident that the alleged weapon of offence is yet to be recovered by the police. Hence, if the petitioner is protected against his arrest at this stage, then the same may hamper the free and fair investigation on the part of the police; as well.

In view of the above, finding no merits in this case, the present petition for anticipatory bail, is dismissed.

16th September, 2019
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>