

S.No.105

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

CRM-M-48587 of 2019 (O&M)

Date of Decision:16.11.2019

BirenderPetitioner

Vs.

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Jitender Dhanda, Advocate for the petitioner.

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 FIR No.690 dated 19.10.2019 registered under Sections 148, 149, 323, 325, 452, 506 IPC at Police Station City Hansi, District Hisar.

As per the allegations, on 18.10.2019, the complainant along with her brother Mohit and mother Sunita were present at their house. At about 8.00 pm, the present petitioner and his accomplice went to the house of the complainant; armed with lathis, dandas and hockey sticks. Thereafter, the petitioner and his accomplice gave merciless beatings to the complainant, her brother Mohit and mother Sunita; with lathis, dandas and hockey sticks. Because of that, the petitioner suffered fracture as well. The reasons for this attack, as stated in the allegations, are that the present petitioner is the husband of the complainant. The petitioner and the complainant are having strained relationship. Because of that, the complainant had even been compelled to leave the house of the petitioner. As a result, the attack had happened.

Learned counsel for the petitioner submits that no such incident, as stated in the FIR had ever happened. Still further, it is

submitted that no fracture was ever suffered by the complainant in the alleged incident. The fracture is manipulated by the complainant just to involve the petitioner in a false case, so as to put a pressure upon him. It is further contended that all the offences are triable by Magistrate. Three children of the couple are with the petitioner only. Hence, the petitioner deserves to be protected against his arrest.

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.

Having heard learned counsel for the petitioner and perused the file, this Court finds that there are specific allegations against the petitioner.

It is evident from the police proceedings, on the file, that the complainant and her family members were admitted to the General Hospital, Hansi on account of injuries suffered in the alleged incident. Even the MLRs were prepared at the General Hospital qua the complainant and other family members. The doctor had found six injuries on the body of the complainant Monika. The mother of the complainant was found to have got one injury and, similarly, one injury was found having been suffered by the brother of the complainant, as per the MLRs prepared by the General Hospital. Therefore, this Court does not find any substance in the argument of learned counsel for the petitioner that no such incident had happened. Still further, as the subsequent medical examination would reveal, the complainant was even found having fractures in leg and the arms, due to which Section 325 IPC was added in the case. Hence, this Court is of the opinion that the complainant cannot be alleged of fabricating any story or of manipulating any injuries as such. The probative value of the evidence, claimed by the complainant may be liable to be assessed during the trial, however, at this stage, the allegations of the complainant cannot be taken as incorrect on the face of it.

In view of the allegations, as mentioned above, this Court does not find any mitigating circumstances, showing, prima-facie, the ex-facie innocence of the petitioner, vis-a-vis the allegations levelled against him. Hence, this Court does not find any ground to exercise its extra-ordinary power in favour of the petitioner, so as to protect him against his arrest. Otherwise also, there are specific allegations qua use of the lathis, dandas and hockey sticks, which have resulted in grievous injury to the

complainant. Therefore, the Police would, naturally, be required to recover the alleged weapon of offence as well, to take the investigation to its logical end. If the petitioner is granted protection against his arrest, in the opinion of this Court, the same would hamper free and fair investigation by the Police as well.

In view of the above, finding no merits, the present petition is dismissed.

November 16, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No