

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51466-2018 (O&M)

Date of decision:07.03.2019

Lakhbir Singh @ Gabbar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Brijeshwar Singh Bhalla, Advocate, for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab.

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.173 dated 17.08.2018 under Sections 302, 201, 34 of IPC, registered at Police Station Jandiala, Amritsar.

The case against the petitioner was registered on the statement of one Ranbir Singh S/o Subeg Singh, in which it was alleged that his brother Harpreet Singh @ Happy was working as driver; with Nandani Gas Plant; on his vehicle Bolero bearing registration No.PB 08-BG 3683. On 16.08.2018, his brother Harpreet Singh @ Happy had gone on work at 7.00 a.m. at Mehta Road Hothian; by taking his vehicle. At 10.30 a.m., the complainant was going to Guru Ram Dass Hospital Hothian for some personal work on his motor cycle. When he reached near turning point of Dera Gumtalian Qilla Mehka, then his brother Harpreet @ Happy along with Dilawar Singh, Manpreet Singh, Lakhbir Singh @ Gabbar and Bhinda met him; while coming from bus stand of Hothian. The complainant stopped them and asked his brother Harpreet Singh @ Happy as to where he was going with them. His brother told that he was going for some work.

Thereafter, the complainant returned to his home at about 7/8 p.m.

Thereafter, since his brother did not return home, therefore, he tried to contact his brother. However, his phone was switched off. Thereafter, the complainant searched for his brother but he could not trace him. On 17.08.2018, at about 8.30 a.m. when he reached at the turning point of village Khankot in search of his brother then he saw the dead body of his brother Harpreet Singh @ Happy floating in Sua (Canal). Accordingly, the complainant had lodged a complaint that he was sure that the said Dilawar Singh, Rajinder Singh, Manpreet Singh, Gabbar Singh S/o Amrik Singh and Bhinda, who were already known to the complainant personally, had caused the death of his brother, by injecting him with some intoxicant substance. It was further alleged that the motive behind the occurrence is that about 2/3 months back, his brother had a dispute with these persons and he had also disclosed to the complainant that the said persons were demanding money from him, for sale and purchase of heroine, which he did not give to them. On account of this, the persons named in the FIR were having grudge against him.

Learned counsel for the petitioner has submitted that in the facts of the case, Section 302 IPC is not attracted. Still further, it is submitted that there are two Gabbers, one mentioned in the FIR and other mentioned in the disclosure statement of the co-accused. The petitioner is not the Gabber, who is involved in this case.

On the other hand, learned counsel for the State, being instructed by SI Balbir Singh submits that Section 302 of IPC is patently made out in this case. As per the FSL report regarding visra of the deceased, it has been found that excessive quantity of *Morphine* was present in the body of the deceased. It is further submitted by the learned State

counsel that there is a positive evidence against the petitioner, qua being last seen with the deceased. Countering the other arguments of the learned counsel for the petitioner, learned State counsel has submitted that the attempt of the petitioner to create another Gabbar in the story is totally baseless. The co-accused has not mentioned any other Gabbar. He has also disclosed the name of the present petitioner with his parentage by saying that he had also participated in the incident.

Having heard learned counsel for the parties, this Court finds itself unable to exercise its power under Section 438 Cr.P.C. for granting benefit of anticipatory bail to 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 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.

The facts of this case unequivocally point towards the unnatural death of the deceased. The presence of the poisonous substance has been confirmed by the FSL report. The presence of the petitioner last time with the deceased has also been deposed by the witness. That version of the witness is supported even by the co-accused of the present petitioner, in his disclosure statement. Hence, this Court does not find any mitigating circumstances showing, ex-facie innocence of the accused, qua the allegations levelled against him. Otherwise also, it is a murder case and the investigation of the case is still at the initial stage. Therefore, if the petitioner is granted concession of anticipatory bail that shall obstruct the fair investigation of the case.

This Court also does not find any substance in the argument of learned counsel for the petitioner that the petitioner is not the same Gabbar as is mentioned in the FIR. The record of the police file, which has been produced by learned counsel for the State; does not point out any other Gabbar with a different parentage; as compared to the petitioner. Accordingly, there is only one Gabbar and his parentage is duly specified during the police investigation. There is no scope for confusing the identity of the petitioner in the name of the presence of any other supposed person named Gabbar.

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

07.03.2019

Hemlata

(RAJBIR SEHRAWAT)

JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No