

Sr. No.209

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

**CRM-M-56395-2018
Date of decision:25.01.2019**

Ankit Kharbanda

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. P.S.Khurana, Advocate
for the petitioner.

Mr. S.S.Cheema, AAG, Punjab.

Mr. V.Ramswaroop, Advocate
for the Complainant.

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.227 dated 30.04.2018 under Sections 323,326,506,120-B IPC, registered at Police Station Division No.7, Police Commissioner, Ludhiana District Ludhiana.

Learned counsel for the petitioner has submitted that the case against the petitioner is totally false. It is contended that no incident, as alleged in the FIR ever happened. It is further contended that even if the incident is taken to have happened, there is improvement in the version given by the Complainant. In the first instance; on the date next to the alleged incident, a DDR was got registered by the complainant in which only three persons were named. However, subsequently the Complainant has changed the version and implicated five persons in the case. This shows that the case is being given different proportions. Learned counsel has

further submitted that although the allegations are that the incident happened in the Police Station, but the police have recorded in the proceedings that it had taken place outside the Police Station; near MIG houses. Still further it is submitted by the counsel that there is no injury inviting Section 326 IPC. Hence the petitioner deserves to be granted anticipatory bail.

On the other hand, learned counsel for the State, being instructed by ASI Baljit Singh, submits that, in fact, it is the petitioner who is the main accused in the case. He is attributed injury on the hand of the Complainant. As per the medical record, this injury have been found to be grievous in nature. The radiological examination of the Complainant has confirmed the fact that there is a fracture in the hand of the Complainant. It is also pointed out by the counsel for the State that the petitioner has been declared proclaimed person by the Court below and the FIR under Section 174-A has been registered against him. It is further pointed out by the State counsel that still another FIR had already been registered against the petitioner under Sections 498-A, 313, 354 IPC.

Learned counsel for the Complainant has submitted that the incident had, in fact, happened inside the Police Station. Even if the statement of the petitioner is considered then also the alleged MIG houses are also just abutting the Police Station. Learned counsel for the Complainant has also supported the argument of the learned State counsel by submitting that it is the present petitioner who is the main accused and who had given grievous injury to the complainant; without there being any provocation on the part of the complainant, who had come to the Police Station for conciliation proceedings.

Having heard the learned counsel for the parties, this Court finds itself unable to exercise powers under Section 438 Cr.P.C in favour of the petitioner and to grant him the concession of anticipatory bail. As per the allegations and submissions made by the learned State counsel, it is clear that the major injury caused to the Complainant is attributed to the petitioner. The injury caused by the petitioner is a fracture in the hand of the Complainant. Still further; it has also come on record that the petitioner has already been declared a proclaimed person since he has avoided the process of law so far. Although the fact whether the incident has actually taken place within the premises of the Police Station or outside it may be a moot point, however, the fact remains that there is an injury caused by the petitioner to his wife, when she had, admittedly; gone to attend the conciliation proceedings and the injury attributed to the petitioner is grievous in nature.

No doubt the accused as an individual has a right to life and liberty. However, this right of life and liberty can very well be curtailed as per the procedure prescribed by law. In case of criminal investigation, the ordinary procedure for curtailing the right to life and liberty of an accused is that the investigating officer of a case can arrest the accused even without warrants from the Court. However, to ensure that an innocent person is not unduly harassed by the Police, a special and extraordinary power has been conferred upon the Courts to grant anticipatory bail to the accused. However, this power is so special and extraordinary that it is not available in some parts of the country qua all the offences and qua some special offences under special statutes; through out the country. Hence the power to release the person on anticipatory bail, by exercising power under

Sections 438 of Cr.P.C have to be exercised with due circumspection. This power can be exercised only if there are circumstances, leading predominantly, towards the ex-facie innocence of the accused, coupled with the fact that in case the accused is granted interim protection then investigation of the case would not be unduly hampered.

As is clear from the allegations, substantiated by the medical record, there are no circumstances showing innocence of the petitioner, to any degree vis-a-vis the allegations levelled against him. The actual dimensions of the participation of the petitioner in the alleged crime can be unearthed by the Police only if the Police are given freedom to interrogate the petitioner in the manner the Police think fit. This Court also finds that, in the fact and circumstances of the case, the investigation of the case would be unduly hampered if the petitioner is granted concession of anticipatory bail. Moreover the extra sympathy of the Court in favour of the petitioner would be totally misplaced; keeping in view the contempt which the petitioner has exhibited towards the process of law and which has led to be being declared the proclaimed person.

In view of the above, this Court does not find any merit in the present petition. The same is dismissed.

25th January, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*