

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

202

**CRM-M-15420-2020
Date of decision: 17.07.2020**

Mohan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Kushaldeep Kaur, Advocate
for the petitioner.

Mr. H.S. Multani, AAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The case has been taken up for hearing through video conferencing.

The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") for grant of anticipatory bail in case FIR No.26 dated 15.02.2020 registered at Police Station Machhiwara, Police District Khanna under Sections 323, 324 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") to which Section 326 of the IPC was added lateron.

The petitioner was granted interim anticipatory bail by the Coordinate Bench of this vide order dated 17.06.2020 which reads as under:-

"All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks the concession of anticipatory bail upon FIR no.26, dated 15.02.2020,

having been registered at Police Station Machhiwara, District Khanna, against him, alleging therein the commission of offences punishable under Sections 323, 324 read with Section 34 of the IPC, with Section 326 of the IPC added subsequently.

Ms. Kushaldeep Kaur, learned counsel for the petitioner, submits that even as per the FIR, the only role attributed to the petitioner is that he was carrying a gandasi and that he gave kick-blows to one of those on the complainant side and that it has been erroneously recorded by the learned Additional Sessions Judge in his order declining bail to the petitioner, that the petitioner had inflicted a gandasi blow upon the complainant, whereas it was Lachhman Singh who is alleged to have snatched a gandasi from the petitioner and then inflicted a blow on the complainant.

Without making any comment on the merits of the case, notice of motion is issued to the respondent-State, with Mr. Bhupender Beniwal, learned AAG, Punjab, accepting notice at the asking of the court, with him having received an advance copy and having taken instructions to the effect that in fact there is a crossversion to the FIR recorded, with him further submitting that it was the petitioner who had inflicted the gandasi blow upon the complainant.

Having considered the above contentions, firstly of course it is to be noticed that a reading of the FIR shows that even the complainant himself does not actually accuse the petitioner of attacking him with a gandasi; further, there is admitted by a cross-version to the FIR also recorded.

Consequently, without making any comment on the merits of the case, for or against the petitioner, it is considered appropriate at this stage that in the meanwhile,

upon the petitioner joining investigation, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaqa Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaqa/Duty Magistrate immediately, who would then summon the arresting officer and direct him to join his in investigation.

Adjourned to 17.07.2020."

The petition has been opposed by the learned State counsel.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

Learned counsel for the petitioner has submitted that the petitioner is alleged to have caused simple injuries to the complainant and injury attracting Section 326 of the IPC is attributed to co-accused Lachhman Singh. The petitioner has joined the investigation and his custodial interrogation is not required.

Learned State counsel, on instructions from ASI Darshan Singh has conceded that in compliance with order dated 17.06.2020 passed by the Coordinate Bench of this Court, the petitioner has joined the investigation but submitted that the petitioner did not cooperate with the investigating officer for recovery of the gandasi and his custodial interrogation is required in the case. Therefore, the petition may be dismissed.

In the present case injury attracting Section 326 of the IPC

is attributed to co-accused Lachhaman Singh. In view of the nature of criminal acts attributed to the petitioner, his custodial interrogation for recovery of alleged gandas is not essential. Keeping in view the facts and circumstances of the case and role attributed to the petitioner but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the concession of anticipatory bail.

Therefore, the petition is allowed and order dated 17.06.2020 granting interim bail to the petitioner is made absolute subject to compliance with conditions enumerated in Section 438 (2) of the Cr.P.C..

17.07.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No