

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

103

**CRM-M No.17342 of 2020**  
**DATE OF DECISION : 3<sup>rd</sup> JULY, 2020**

**Vikash Kumar @ Daily**

**.... Petitioner**

**Versus**

**State of Punjab**

**.... Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

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**In virtual Court**

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Present: Dr. G.P.S. Randhawa, Advocate for the petitioner.

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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/pre-arrest bail in case FIR No.0093 dated 28.06.2019 registered under Sections 324, 323, 379 & 34 IPC (Section 326 IPC added later on), at Police Station City Batala, District Gurdaspur.

It is the case of the prosecution that the petitioner along with some other persons caused injuries to the complainant. He is alleged to be having *datar* in his hand; and has caused injuries. In total, the complainant is stated to have received 10 injuries, out of which 01 injury caused by sharp edged weapon is declared to be grievous.

The counsel for the petitioner has submitted that on the day of the alleged occurrence the petitioner was not even present at the spot. He has wrongly being involved in the case by the complainant to settle an old score. Still further, it is submitted by the counsel that the petitioner is having tuberculosis and is getting treatment for the same. The entire

family of the petitioner is in England and there is nobody to take care of him. The complainant is trying to take advantage of this situation.

Notice of motion.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab, accepts notice on behalf of the State.

Learned State counsel has pointed out that the grievous injury is attributed to the petitioner only. Still further, it is submitted that the weapon of the offence is yet to be recovered. Not only this, even the details of the other co-accused; accompanying the petitioner at the time of the assault, are also to be extracted by the police. Hence, if the petitioner is protected against his arrest at this stage, then the same shall hamper the free and fair investigation on the part of the police; as well. Qua the illness of the petitioner, it is pointed out by the State counsel that the authorities are taking every possible precaution to ensure that any person in custody does not come into contact with covid-19 disease affected person.

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, there are very specific allegations against the petitioner. In fact, as per the allegations he is directly named as having caused injuries with a specified weapon of offence. The weapon of offence is yet to be recovered. Therefore, the facts of the present case, do not show any *ex-facie* innocence on the part of the petitioner. Hence, this court does not find this to be a fit case to grant concession of anticipatory bail to the petitioner. Otherwise also if the petitioner is protected against his arrest at this stage, that would hamper the free and fair investigation by the police.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

**3<sup>rd</sup> JULY, 2020**  
'raj'

**(RAJBIR SEHRAWAT)**  
**JUDGE**

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