

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

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IN VIRTUAL COURT

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CRM-M No. 18071 of 2020

Date of decision : 21.7.2020

Sandeep Bajaj @ Sonu

.....Petitioner

Vs.

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. M.K. Bhatnagar, 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 case FIR No. 65 dated 11.4.2020, registered under Sections 307, 341, 323, 506, 148 and 149 IPC, at Police Station Mohkampura, District Police Commissionerate, Amritsar.

The allegations against the petitioner is that he along with other persons caused injuries to the son of the complainant. The petitioner is alleged to have caused injuries to the son of the complainant on his head and face, with a baseball bat.

It is contended by the counsel for the petitioner that there is a delay of 2 days in lodging the FIR. The petitioner has no connection with the crime at all. Hence, the petitioner deserves the concession of anticipatory bail.

Notice of motion.

Mr. Pawan Sharda, Senior DAG, Punjab, accepts notice on behalf
of the State.

The counsel for the State, being instructed by ASI Ranjit Singh, has submitted that the petitioner is the main accused in this case. He has caused grievous injuries on the vital parts of the body of the son of the complainant. The injuries attributed to the petitioner are on the head and face of the injured involving fractures of bones. The weapon of offence is yet to be recovered. Hence, the petitioner does not deserve any concession of anticipatory bail.

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 facts of the present case, as per the allegations, the petitioner is stated to be the main accused. The injuries attributed to him are

also on the vital parts of the body of the injured. The injuries caused by the petitioner are alleged to be the fractures on head and face of the injured. In view of this, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis the allegations levelled against him. Hence, this Court is not inclined to exercise the powers under Section 438 of Cr.P.C. so as to grant protection to the petitioner against his arrest. Moreover, the weapon of offence is yet to be recovered. Therefore, if at this stage, the petitioner is protected against his arrest, then the police may not be able to recover the weapon of offence. Hence, the custodial interrogation of the petitioner is required. Grant of protection to the petitioner at this stage 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.

However, nothing said hereinabove would affect the merits of the case during the trial, if any.

(RAJBIR SEHRAWAT)
JUDGE

21.7.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No