

S.No.105

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

CRM-M-20493 of 2020 (O&M)

Date of Decision:27.07.2020

Manveer SinghPetitioner

Vs.

State of PunjabRespondent

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IN VIRTUAL COURT

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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. P.S. Punia, 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.116 dated 10.06.2020 registered under Sections 308, 323, 436, 148, 149 IPC at Police Station Bilga, District Jalandhar.

It is contended by counsel for the petitioner that the case against the petitioner is totally concocted. The petitioner has no role in the crime. He is a resident of other place which is 100 kilometers away from the place of occurrence. His name has been sought to be involved only because of the fact that his sister, who used to reside in America might be having some kind of relation with the complainant, which had gone sour. Otherwise, the petitioner has not even ever met the complainant. He has no concern with the matter. Still further, it is submitted by counsel for the petitioner that the complainant has not even given any description, while expressing his apprehension that the person involved in the incident was the petitioner. Therefore, there is no basis for involving the petitioner into the crime.

Still further, it is submitted by the counsel that the injuries are only on non-vital parts of the body. Therefore, by no means, Section 308 IPC is involved in the matter. Although Section 436 IPC is also sought to be involved, however, there are not even allegations which constitute Section 436 IPC. All the other offences are bailable in nature. The petitioner deserves protection against his arrest.

Notice of motion.

Mr. V.G. Jauhar, Sr. DAG, Punjab, accepts notice on behalf of the State.

Learned State Counsel, on instructions from SI Gursharan Singh, has submitted that the petitioner is involved in a heinous crime. He has attempted to kill the complainant by running the complainant over with his car. In the process, the complainant has been caused as many as ten injuries. Out of those, four injuries have been opined to be grievous in nature. It is further submitted by counsel for the state that identity of the petitioner is not in doubt because the complainant himself has named the petitioner based on a specific assertion that he had seen the petitioner in photographs and videos with the sister of the petitioner while in America. Learned State Counsel has further submitted that the case acquires more heinous dimensions viewed with the fact that the complainant was here in India only for a short duration and during that period only, he has been attacked by the petitioner. This shows a clever planning and execution of the crime. The weapon of offence and the car in question are yet to be recovered.

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 even 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.

Coming to the facts of the present case, this Court finds that there are specific allegations against the petitioner qua the injuries being caused to the complainant. The complainant has expressed his reasonable apprehension qua the petitioner being involved in the crime. He has been candid enough to not straightway name the petitioner in the crime, rather he has asserted that he had recognised the petitioner being present because the complainant had seen the petitioner in videos and photographs earlier. This

is not even disputed that there are; as many as; ten injuries caused to the complainant, including four grievous injuries. Hence, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis the allegations levelled against him. Still further, this Court finds substance in the argument of the counsel for the State, that weapon of the offence, including the car in question; with which the attempt was made to run over the complainant, are yet to be recovered. Hence, if the petitioner is protected at this stage, the same would hamper the free and fair investigation on the part of the Police. Therefore, this Court does not find any ground to exercise its extra-ordinary powers under Section 438 Cr.P.C so as to protect the petitioner against his arrest. Hence, without expressing anything more, the present petition is dismissed.

However, nothing said herein above shall affect the merits of the case during trial, if any.

July 27, 2020	(RAJBIR SEHRAWAT)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No