

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

Crl. Misc. M-20644 of 2020
Date of decision: 30.07.2020

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Rohtash @ Gona

....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Diwan S. Adlakha, Advocate,
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Namit Khurana, Advocate,
for the complainant.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

Present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 95 dated 07.06.2020 under Sections 323, 506 IPC (Sections 325 and 308 IPC added later on) registered at Police Station Bilaspur, District Yamuna Nagar.

Counsel for the petitioner has vehemently submitted that the petitioner had been arrested by the police and granted bail on 02.07.2020 in the above said FIR. It is submitted that the non bailable offence under Section 308 IPC as such was added later on and, therefore, he is not required for the purposes of investigation. It is submitted that whatever the recoveries as such have been effected, have already been done as such and, therefore, the petitioner is not required for the purposes of investigation.

A perusal of the FIR would go on to show that the petitioner is the sole accused who inflicted the injuries on the head of the complainant Rohtash with the handle of a *kassi* as he was going on a motor cycle, which hit him on his left eye. The complainant fell down and thereafter injuries were caused again on the forehead, head and shoulders, which led to the lodging of the FIR. The complainant was referred to the PGI, Chandigarh from Jindal Hospital, Jagadhri. He remained unfit to make statement and his statement was recorded later on, on 07.06.2020. As per the report which was received from Jindal Hospital, Jagadhri, injury nos. 1 and 2 were stated to be grievous in nature as there was a fracture on the head though it was caused by a blunt weapon. The DSP thereafter, in his report, made the addition of Section 308 IPC in the case. It is in such circumstances, the Additional Sessions Judge, Yamuna Nagar at Jagadhri rejected the anticipatory bail application. The explanation of the DSP, as such, was also called for as to how the Investigation Officer had granted bail at that point of time since Section 506 IPC is a non bailable offence as per the notification issued by the Haryana Government. Counsel has relied upon the judgments of this Court to submit that the police, by adding a new Section as such, cannot defeat the right of anticipatory bail.

Counsel for the State and the complainant have rightly pointed out that it was in peculiar facts and circumstances where anticipatory bail had been granted by the Court and thereafter non-bailable offence had been added. In the present case, as noticed, the petitioner is the sole accused and is responsible for causing fracture on the head of the complainant. The necessary investigation is required as to what was the motive as such to cause injuries on the person of the complainant who was just passing by and

going to shop at 7.00 a.m. and whether the injuries were caused at the instance of some other person. The said facts can only be investigated by way of custodial interrogation and not if the petitioner has the benefit of the anticipatory bail.

In such circumstances, this Court is of the opinion that no case is made out for grant of anticipatory bail to the petitioner and the present petition is accordingly dismissed.

30.07.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No