

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

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IN VIRTUAL COURT

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**CRM-M No. 23843 of 2020
Date of decision : 25.9.2020**

Ravinder Singh @ Rishu

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. K.G. Chaudhry, 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.49 dated 30.4.2020, registered under Sections 307/323/427/148/149 IPC and Section 25 of the Arms Act, at Police Station Begowal, District Kapurthala.

The allegations against the petitioner, in brief are that on 29.10.2020 the complainant along with Fateh Singh, on their tractor, were coming from their fields after loading the wheat husk in their respective tractors-trollys. At about 10:00/10:30 p.m. when they had reached near the house of Sarabjit Singh, then the present petitioner and his other named co-accused, who were armed with *datar*, *barchha*, *sua* and pistol; besides other weapons, way-laid the complainant and Fateh Singh. At that time, several other persons in two groups, one in maruti car and others on motor cycles, were also with the petitioner and his accomplices. The accused mentioned in the FIR, gave beatings and caused injuries with their respective weapons. The petitioner and his co-accused Mewa Singh were having pistols in their hands.

The petitioner had fired with his pistol upon Fateh Singh. The said Fateh Singh jumped from the tractor to save himself. As a result, the shot fired by the present petitioner passed near the head of said Fateh Singh. Thereafter, persons harvesting the crops in the nearby fields, came on the spot. Therefore, all the accused, including the petitioner fled away from the scene by threatening the complainant and Fateh Singh. The reason for this assault, as mentioned in the FIR, is that the side of the complainant has got an order from the Civil Court in their favour qua the agriculture land. However, the petitioner and his side are not ready to honour the said order. Therefore, to teach the lesson, the complainant was attacked.

Arguing the case, learned counsel for the petitioner has submitted that it is a case of no injury. Still further, it is submitted that all other co-accused, except two, have already been released on anticipatory bail by various Benches of this Court, including order passed by this Bench as well. It is further submitted by the counsel that even as per the allegations of the prosecution, the petitioner is alleged to have only fired. No injury was caused with that fire to anybody. The petitioner shall join the investigation. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of the State and Mr. Vivek K. Thkaur, Advocate, has put in appearance on behalf of the complainant.

The counsel for the State, being instructed by SI Raghubir Singh and being assisted by the counsel for the complainant, has submitted that there

are specific allegations against the petitioner. As per the allegations, the petitioner and his co-accused Mewa Singh were having pistols in their hands. They had fired upon the complainant and his companions with intention to kill them. Even the empties of two types have been recovered from the place of occurrence. The police are required to recover the weapon of offence used by the petitioner. Therefore, the custodial interrogation of the petitioner is must. It is also submitted by the counsel that although in the first instance, this Court had granted interim protection to the petitioner, however, he had not joined the investigation. Still further, it is submitted that earlier application filed by the petitioner seeking anticipatory bail was withdrawn by the petitioner only when this Court was not inclined to interfere in favour of the petitioner. Therefore, the present petition deserves to be dismissed.

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 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, as the record shows that the petitioner had earlier filed another petition seeking anticipatory bail. In that petition, the petitioner was even granted interim protection with a direction to join the investigation. However, the petitioner had not joined the investigation. Besides this, keeping in view the allegations against the petitioner, the Court was not inclined to interfere, therefore, the petitioner had withdrawn the earlier petition. Thereafter, the present petition has been filed.

As per the allegations, it is only the petitioner and the other co-accused Mewa Singh, who are alleged to have fired from fire arms. There are specific allegations levelled by the complainant and his companions, who were assaulted by the petitioner and his accomplices; that the petitioner had fired with his fire arm. Therefore, there is no parity of the case of the petitioner with other co-accused.

The State counsel has also pointed out that the police have recovered two types of empties/fired bullets from the place of occurrence. This lends credence to the allegations made against the petitioner. Therefore, this Court does not find any ex-facie innocence on the part of the petitioner, vis-a-vis the allegations levelled against him. Moreover, this Court finds substance in the arguments of the counsel for the State that since, prima facie,

the allegation of firing upon the complainant is substantiated by the recovery of empties from the spot, therefore, the police would require custodial interrogation of the petitioner for effecting recoveries of the fire arm from the petitioner. Hence, protecting the petitioner against his arrest would hamper the free and fair investigation also. Accordingly, this Court does not find this to be a fit case to interfere so as to grant protection to the petitioner against his arrest.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

25.9.2019

Ashwani

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