

**S.No.103**

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

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**CRM-M-27912 of 2020 (O&M)**

**Date of Decision:15.09.2020**

**Rahul**

**.....Petitioner**

**Vs.**

**State of Haryana**

**.....Respondent**

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**IN VIRTUAL COURT**

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

Present:- Mr. Gaurav Gupta, 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 bail in case FIR No.0123 dated 19.05.2020 registered under Sections 285/323/34/506 IPC and Section 25 of the Arms Act 1959 (Section 307 IPC added later on) at Police Station Sadar Palwal, District Palwal.

The allegations against the petitioner, in brief, are that the complainant made a statement to the Police that she, her husband and children were working in the fields. At that time, Rahul, the present petitioner and his brother Sunil attacked them. The present petitioner started firing with illegal weapon and his brother Sunil attacked with Farsa. In this incident, the husband of the complainant was given injuries on

shoulder, legs and hand. After firing, they tried to collide with the car, but

thereafter they ran away with the car of the brother of the complainant and left their i20 car on the spot.

It is submitted by counsel for the petitioner that the case against the petitioner is totally concocted. Even as per the allegations of the prosecution, no one from the side of the complainant has received fire-arm injury. The co-accused of the petitioner has already been granted concession of anticipatory bail. The petitioner would join the investigation, hence, the petitioner deserves to be granted concession of anticipatory bail.

Notice of motion.

Mr. R.S. Jhand, Addl. AG, Haryana, accepts notice on behalf of the State. Mr. Randhir S. Hooda, Advocate appears for the complainant.

Learned State Counsel, on instructions from SI Birhampal, has submitted that there are specific allegations against the present petitioner qua having fired from an illegal weapon. Therefore, the petitioner does not deserve any concession of anticipatory bail. The weapon of offence is yet to be recovered by the Police. Still further, it is submitted that there is one more case of similar nature against the present petitioner.

Carrying forward the same argument, learned counsel for the complainant has submitted that the petitioner and his family have been harassing the family of the complainant for a long time. There was a dispute between the parties regarding the property. That civil dispute was decided in favour of the family of the complainant. However, the petitioner could not re-concile with that matter. Hence, the petitioner and his co-accused attacked the complainant and his family members; by entering

into their fields. The husband of the complainant has received injuries. Whether those are by gun shots or not is a matter of trial. Learned counsel for the complainant has also pointed out that even at the time of granting bail to the co-accused, it was not brought to the notice of this Court that there was another case against the present petitioner, as well as, against the said co-accused Sunil. Hence, the petitioner does not deserve the concession of anticipatory bail.

No doubt, 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.

Now coming to the facts of the present case, this Court finds that there are specific allegations against the petitioner. He is alleged to have fired from an illegal fire-arm and is alleged to have attacked the complainant and her family by entering into their fields. The husband of the complainant has received injuries in the incident. Accordingly, Section 307 IPC has been added in this case. In view of these allegations, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis allegations levelled against him. So far as the factum of anticipatory bail having been granted to the co-accused Sunil is concerned, it deserves to be noted that he is not alleged to have used fire-arm in the first instance. The allegation of firing from the fire-arm is against the present petitioner only. Although in subsequent details, even the co-accused Sunil Kumar is also alleged to have brought some fire-arm from his car, however, that fact would be a subject-matter of the trial. Hence, the present petitioner cannot claim parity with his co-accused Sunil. Moreover, this Court finds substance in the argument of the counsel for the State that the illegal weapon, used by the petitioner in the incident, has to be recovered by the Police. Hence, the custodial interrogation of the petitioner may be required by the Police.

In view of the above, without commenting any further on merits of the case, the present petition is dismissed.

September 15, 2020

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( RAJBIR SEHRAWAT )

JUDGE

Whether Speaking/reasoned

Whether Reportable

Yes/No

Yes/No