

S.No.102

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

**CRM-M-28000 of 2020 (O&M)
Date of Decision:16.09.2020**

**Manpreet Singh @ Mapi
Vs.
State of Punjab**

.....Petitioner

.....Respondent

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vikasdeep Singh, 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.234 dated 29.07.2020 registered under Sections 324, 307, 506, 148, 149 IPC at Police Station Sultanpur Lodhi, District Kapurthala.

The allegations against the petitioner, as mentioned in the FIR, are that the complainant is working in S.P.L Wine Company. On 28.07.2020, he, alongwith Atinderjeet Singh, brought cash from wine shop to deposit in the office where a Tavern is also run. The said Tavern is run by one Satnam Singh. At about 09:25 PM, when the complainant went inside the Tavern, 10-12 youngsters were consuming alcohol. Three motor-cycles and one Innova Car bearing No.PB-10-DS-9824, were parked outside that place. At that Tavern, the present petitioner was also consuming liquor. On

seeing the complainant, Manpreet Singh- petitioner got up, went outside the Tavern, brought a datar from the Innova car parked outside and called his companions, who were consuming liquor at the said place. The petitioner exhorted that the complainant had got his illicit liquor caught by informing the Police, therefore, he is to be taught a lesson. Thereafter, the petitioner started hurling abuses at the complainant. When the complainant tried to stop him from hurling abuses, then the petitioner, with an intention to kill the complainant, gave a datar blow on the left side of head of the complainant. When the complainant fell down, then the other 10-11 persons gave kick blows upon him. When the complainant raised a noise, then the present petitioner and his other companions ran away with their weapons. While fleeing from the spot, the petitioner and his companions extended threats to the complainant that he will not be spared. On account of the injury sustained by the complainant he was admitted to Government Civil Hospital, Sultanpur Lodhi, where he got treatment. With these allegations, the FIR was lodged.

Learned counsel for the petitioner has submitted that the case against the petitioner is totally false and frivolous. It is further submitted that the case has been concocted by the complainant because; earlier the complainant had got made a case made against the petitioner under Excise Act, but the petitioner was granted bail in that case. Therefore, to ensure that the petitioner does not enjoy his liberty, the present FIR has been concocted. Still further, it is submitted that the version of the complainant is rendered doubtful by the very fact that as per the allegations, 10-12 other unknown persons were also present with the petitioner and caused injuries,

however, the petitioner has got only one injury. Still further, it is submitted that the doctor had opined that the nature of the injury shall be specified after receiving the X-ray report, however, so far the X-ray report has not been received. Therefore, on the face of it, the offence under Section 307 IPC is not made out. The petitioner shall join the investigation. Hence, the petitioner deserves to be released on anticipatory bail.

Notice of motion.

Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of the State.

Learned State Counsel, on instructions from ASI Bhupinder Singh, has submitted that there are specific allegations against the petitioner. He has been named in the FIR itself. An injury on vital part of the body of the complainant has been attributed to the petitioner. Even as per the medical opinion, the injury on the face of the complainant is bone deep, near the neck. Hence, it can easily be inferred that the attempt of the petitioner was to attack the complainant with an intention to kill him. Still further, it is submitted that the petitioner is a habitual offender. He is having, as many as, nine cases against him. The Police are yet to recover the weapon of offence and are yet to get the details of the co-accused of the petitioner. Hence, the custodial interrogation of the petitioner would be required. Therefore, the petitioner does not deserve 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.

Coming to the facts of the present case, this Court finds that there are specific allegations against the petitioner, by name, that he caused injury to the complainant on his vital body part. The injury is also disclosed to be bone deep. The said injury is caused by a sharp edged weapon. Therefore, 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 the weapon of offence is yet to be recovered and that details of other companions of the petitioner are also to be gathered by the Police, therefore, the custodial interrogation of the petitioner is imperative. Therefore, if the petitioner is protected against his arrest, at this stage, then the free and fair

investigation on the part of the Police would also be adversely affected. Accordingly, this Court does not find this to be a fit case to exercise its powers under Section 438 Cr.P.C so as to protect the petitioner against his arrest.

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

September 16, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No