

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

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IN VIRTUAL COURT

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**CRM-M No. 28023 of 2020
Date of decision : 16.9.2020**

Raj Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. H.K. Brinda, 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.58 dated 17.6.2019, registered under Sections 323/324/34 IPC (Section 326 IPC added subsequently), at Police Station Kiratpur Sahib.

The FIR in the present case came into being on the complaint of Gian Chand son of Hari Ram, alleging that his daughter was married to the elder brother of the present petitioner about one and a half year back. However, she was being continuously harassed and tortured by her in-laws family. On 5.6.2019, the complainant received a phone call from his daughter that her in-laws want to kill her and that she was not safe in their house. On listening that, the complainant along with other companions visited the house of the present petitioner on 6.6.2019 at about 1.:30 p.m. The complainant found that the husband of his daughter, her father-in-law and the present petitioner were present there. They had started talking regarding reconciliation of the dispute. However, suddenly, when the son of the complainant asked the

present petitioner regarding having scuffle with his sister, then the present petitioner came in rage and started quarreling with him. In the meantime, the father of the petitioner brought an axe (kulhari), which was kept behind the door, and handed over the same to the present petitioner. Thereafter, the petitioner gave an axe blow on the right side of forehead of the complainant, which caused grievous injuries. When the son of the complainant came forward to save him, the petitioner caused injuries with the axe even on left arm of the son of the complainant. Thereafter, the complainant and his son were saved with difficulty by the other persons present there. With these broad allegations, the FIR came into being.

It is contended by learned counsel for the petitioner that the case against the petitioner is totally concocted. However, it is submitted that the case pertains to the year 2019, whereas, the petitioner is being sought to be arrested after one year. Still further, it is submitted that father and brother of the petitioner have already been granted regular bail by the Courts below. The petitioner will 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. Y.S. Turka, Advocate, has put in appearance on behalf of the complainant.

The counsel for the State, being instructed by SI Balbir Singh, has submitted that there are specific allegations against the petitioner. Rather, it is only the petitioner, who is alleged to have caused injuries to the complainant and his son. The injuries were caused with an axe. The said injuries upon the

complainant are on vital parts of the body and have been found to be grievous in nature. The weapon of offence is yet to be recovered. Hence, the petitioner does not deserve any concession of anticipatory bail.

The counsel for the complainant has carried forward the submissions made by the counsel for the State and has further submitted that earlier, despite injury having been opined to be grievous by the competent medical officer, the police were not taking any action against the petitioner. The complainant had to file a petition before the High Court for seeking direction to the police to initiate action against the petitioner. It is only thereafter, that the police have become active. Therefore, there is no question of delay on the part of the complainant as such. Still further, it is submitted that mere delay in action on the part of the police would not make the gravity of the offence, committed by the petitioner, any lesser. The petitioner has used a specified weapon of offence and has caused injury on the vital part of the complainant; and has also caused injuries to his son. Therefore, the petitioner does not deserve the concession of anticipatory bail.

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, this Court finds that there are specific allegations against the petitioner. He is alleged to have caused grievous injuries on the vital part of the body of the complainant. The injury caused by the petitioner with an axe; on the head of the complainant, has been opined to be grievous in nature; and that too way back in August 2019. Therefore, even the delay on the part of the police in initiating action against the petitioner would not reduce the gravity of the offence, allegedly committed by the petitioner.

Hence, in view of the allegations levelled against the petitioner, this Court does not find any mitigating circumstances, showing prima facie innocence of the petitioner, vis-a-vis the allegations levelled against him. Still further, this Court finds substance in the submissions of the counsel for the State that the weapon of offence is yet to be recovered from the petitioner, therefore, the custodial interrogation of the petitioner would be imperative in this case. Hence this Court does not find this case to be a fit case to exercise

its extraordinary powers provided under Section 438 of Cr.P.C. so as to protect the petitioner against his arrest.

Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

16.9.2019
Ashwani

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