

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

CRM-M No. 28308 of 2020

Date of Decision: 17.09.2020

Bira Masih alias Bir Masih

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vijay Lath, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

The present petition is filed aggrieved of the order dated 10.9.2020 passed by Additional Sessions Judge, Gurdaspur declining anticipatory bail in FIR No. 146 dated 29.8.2020, under Sections 354/323/506/34 IPC, registered at Police Station Dera Baba Nanak.

The FIR was registered at the instance of Smt. Amarjit Kaur. She belongs to Majbi Sikh community. It is alleged that on 7.5.2020 when she went to throw the trash on the village land, she was attacked from back side by Kuldeep Masih @ Bagga son of Bir Masih, Major Masih son of Bir Masih, Bir Masih son of Nantu Masih, Rakesh Masih @ Sonu son of Bachan Masih and Tarsem Masih son of Bachan Masih. They torn her clothes, thereby making her top front visible. She was given beatings with the sticks by all accused. Copy of the medico-legal report was produced. It

was further alleged that when the matter went to SHO, Police Station, Dera Baba Nanak, under the influence of the accused, report was torn and she was forced to sign a compromise. The request was also made to take action against the said SHO.

The enquiry was marked to Deputy Superintendent of Police, Dera Baba Nanak and it was concluded that the land for throwing rudi was given by the Panchayat about 30-32 years back to the poor families. The possession was taken by the accused and the complainant also. The scuffle took place between the complainant and the family of Bir Masih when she was throwing cow dung and was stopped. She was admitted in Civil Hospital, Dera Baba Nanak and MLR No. 9/AK/DBN/7.5.2020 was issued.

Learned counsel for the petitioner submits that there is 86 days' delay in registering the FIR. He relies upon the photographs annexed with the petition to state that the shirt of the complainant was not torn and that in the photographs only Kuldeep Masih is visible and not the petitioner. It is argued that the matter was compromised yet a complaint has been made. The submission is that ingredients of Section 354 IPC have not been specifically alleged by the complainant in the FIR.

Learned counsel for the State, who appears on advance notice, submits that the matter has been enquired into by the Deputy Superintendent of Police, Dera Baba Nanak and the allegations under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 have been dropped. However, considering the *prima facie* evidence including a CD, it has been found that there was a scuffle, beating was given to the complainant and even the petitioner had actively participated in the incident.

The prayer for grant of anticipatory bail is a discretionary relief. Though *prima facie* case is to be seen and anything dilated upon on the merits of the case would affect the investigation and trial, however on insistence of learned counsel for the petitioner the arguments raised are being dealt with.

As regards delay in lodging the FIR is concerned, there are specific allegations by the complainant that she was forced to enter into a compromise and the report was torn by the SHO of the Police Station.

Reliance on the photographs annexed with the petition at this stage are of no help to the petitioner. There is nothing to prove as to when and by whom these photographs were clicked. Merely showing that in the photograph shirt of the complainant was not torn does not belie the allegations. There is every possibility that the photographs even if clicked on the date of incident might have been clicked earlier to the tearing of shirt.

As regards the compromise is concerned, the same cannot be relied upon in view of the allegation that the complainant was forced to compromise and it was actually drafted under the influence of the accused.

The contention that all the ingredients of Section 354 IPC have not been alleged in the FIR does not help the petitioner. The FIR is only the first information, it is only after investigation and enquiry that the case would come forth and accordingly be proceeded with.

Considering the seriousness of the allegations including that there was attack on modesty of a lady belonging to particular strata of society, no case is made out for anticipatory bail.

The petition is dismissed.

However, it is clarified that the above observations have been

made as learned counsel for the petitioner insisted for, the same shall not be construed as opinion of this Court on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

17th September, 2020

<i>mk</i>	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No