

S.No.102

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

CRM-M-34427 of 2020 (O&M)

Date of Decision:29.10.2020

Phool Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent

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

Present:- Mr. Hardial Singh Batth, 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 to the petitioner in FIR No.136 dated 08.09.2020 registered under Sections 323/324/506/504/452/34 IPC at Police Station Jhansa, District Kurukshetra.

The main allegation against the petitioner is that the petitioner along with others caused injuries to the side of the complainant. The petitioner was having kassi (spade) in his hand and he caused injury to Mukesh on head. The injury has been found to be grievous in nature. Hence, the FIR was registered.

It is submitted by counsel for the petitioner that, in fact, it is a case of version and cross-version. Even the side of the complainant had caused ten injuries to three persons from the side of the petitioner. Even the petitioner suffered injury in that scuffle. Otherwise also, it is the complainant side who tried to enter into the premises of the petitioner to encroach upon the same. Hence, the petitioner had only tried for self defence. It is also submitted that two co-accused of the petitioner have

already granted anticipatory bail by this Court. The petitioner shall join the investigation. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. R.S. Jhand, Addl. AG, Haryana, accepts notice on behalf of the State.

Learned State Counsel, on instructions from ASI Naresh Kumar, has submitted that the petitioner is the main accused in this case. The injury inviting Section 324 IPC is attributed to the petitioner only. The investigation is at the initial stage. The weapon of offence is yet to be recovered from the petitioner. It is also submitted that although co-accused of the petitioner have been granted anticipatory bail, however, the allegations against them have no parity with the allegations against the present petitioner. The petitioner is the only person to whom grievous injury is attributed. Hence, the petitioner does not deserve protection against his arrest.

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 direct allegations against the petitioner. He is alleged to have caused grievous injury. 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 also finds substance in the argument of the counsel for the State that the weapon of offence is yet to be recovered by the Police. The investigation is at the initial stage. Hence, if the petitioner is protected against his arrest then the free and fair investigation of the case shall also be hampered. Hence, this Court does not find this to be a fit case to exercise its powers under Sections 438 Cr.P.C; so as to protect the petitioner against his arrest.

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

October 29, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No