

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-1915 of 2021 (O&M)

Date of decision : 24.3.2021

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Karan Kumar and others

.....Petitioners

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Manoj K. Sharma, Advocate for the petitioners.

Mr. J.S. Ghuman, Deputy Advocate General, Punjab.

Ms. Monita Mehta, Advocate for the complainant.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

Reply filed on behalf of the complainant, which be taken on record.

Copy of order dated 23.12.2020 passed by Additional Sessions Judge, Hoshiarpur, has been submitted by counsel for the petitioners today, which be taken on record.

This petition for pre-arrest bail has been filed by petitioners – Karan Kumar, aged 22 years; Ajay Kumar aged 24 year and Anoop Kumar, aged 21 years, sons of Ashwani Kumar, residents of village Asalpur, PO Nainowal Jattan, PS Bullowal, Tehsil and District Hoshiarpur, all of them being accused in cross-version Report No. 31 dated 3.11.2020, for offences under Sections 324, 148, 149 IPC

(Section 326 IPC added later on, vide report No. 26 dated 12.11.2020), in FIR No. 250 dated 31.10.2020, for offence under Sections 307, 336, 323, 148, 149 IPC and Section 25/27 of Arms Act, 1959, registered at Police Station Model town, District Hoshiarpur.

Briefly stated, facts of the case, as per the prosecution story are that, on 30.10.2020, there was a family function in the house of complainant Onkar Lal @ Raja. At about 9.30- P.M. he heard noises outside his house, upon which he alongwith his maternal uncle Gurdial Singh @ Kaka, went outside the house and observed that some persons were giving beatings to their servant Manoj Kumar. They enquired from the assailants as to why they were doing so, which resulted in exchange of hot words and assailants left the spot after giving abuses to the complainant and his maternal uncle. In the meanwhile, Kuldeep Singh @ Deepa, brother-in-law of the complainant also arrived at the spot. After some time, 5/6 persons riding motorcycles came and attacked the complainant side. The assailants gave fist blows to Gurdial Singh @ Kaka and when the complainant came forward to rescue Gurdial Singh @ Kaka, then one of the assailants, who after identification came to be Karan Kumar, gave *khanda* blow to the complainant, hitting him on his head. The complainant raised an alarm. His brother-in-law Kuldeep Singh @ Deepa, fired shot from his revolver in self defence. Karan Kumar had received two bullet injuries in the incident. Thereafter, the assailants left the spot. Complainant-injured was hospitalized, where he has medico legally examined. On information being given to the police,

formal FIR in the matter was recorded. Names of assailants, as it transpired later, were Karan Kumar, Ajay Kumar, Anoop Kumar and Deepak Kumar. As such a counter version of the incident was got recorded by Onkar Lal @ Raja.

Apprehending their arrest in this case, petitioners – Karan Kumar, Ajay Kumar and Anoop Kumar, had approached the Court of Sessions at Hoshiarpur, craving for grant of pre-arrest bail. However, they were unsuccessful there, as such, they have knocked at the door of this Court, praying for grant of similar relief, which request is being opposed by the State counsel and learned counsel appearing for the complainant.

I have heard learned counsel for the petitioners, learned State counsel, learned counsel for the complainant, besides going through the record.

Though there are two versions of the incident, one recorded on the basis of statement of petitioner-accused Karan Kumar, which formed foundation of the FIR and the counter version as narrated by Onkar Lal @ Raja the. However, it comes out, Karan Kumar is said to be the main accused in the counter version, who had caused grievous injury to Onkar Lal @ Raja, on head by use of *Khanda*, which is a dangerous sharp edged weapon.

As per MLR of Karan Kumar, placed on record by the petitioners, he himself had suffered two fire arm injuries. The argument advanced by learned counsel for the petitioners is that a person himself having suffered two fire arm injuries, could not

possibly cause injury to the complainant by use of Khanda.

If we see the prosecution story, petitioner Karan Kumar had caused injury to Onkar Lal @ Raja first and thereafter Kuldeep Singh @ Deepa, brother-in-law of the complainant, had fired shots from his revolver in self defence, hitting Karan Kumar in the process. Therefore, this argument of learned counsel for the petitioners is not acceptable.

Learned counsel for the petitioners has further contended that the complainant himself is a hardened criminal, involved in five criminal cases. May it be so, but then any attack on him is not justified. Therefore, as far as Karan Kumar- petitioner, is concerned, in my view, he is not entitled to the grant of pre-arrest bail.

However, with regard to other two accused – Ajay Kumar and Anoop Kumar, to whom no specific injuries are attributed and as per the prosecution story, the other assailants except, Karan Kumar had given fist blows to Gurdial Singh @ Kaka. In that way, no specific injury is attributed to Ajay Kumar and Anoop Kumar and at the best it can be said that they might have caused simple injuries with fist blows. Therefore, no weapon is to be recovered from them. The custodial interrogation of such petitioners is not found to be necessary.

As such, the instant petition qua Karan Kumar – petitioner No.1, stands dismissed. Whereas, with regard to Ajay Kumar – petitioner No.2 and Anoop Kumar – petitioner No.3, the same is allowed and it is directed that in the event of their arrest in this case,

they be released on bail by the Arresting Officer/Investigating Officer, subject to fulfillment of following conditions:-

- i) that the petitioners shall join the investigation as and when asked to do so by the Investigating Officer.
- ii) that the petitioners shall not give any threat or intimidation to the prosecution witnesses.
- iii) that the petitioners shall not leave India without the prior permission of the Court.
- iv) that the petitioners shall surrender their passport before the Investigating Officer and if they are not having passport then they shall file an affidavit in that regard.

In case the petitioners violate any term and condition on which the bail has been granted to them, the prosecution would be entitled to apply for cancellation of bail.

However, nothing discussed above shall have any bearing on the merits of the case.

24.3.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No