

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

CRM-M-10588-2021 (O&M)

Date of decision: 23.07.2021

Nirbhay Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. J.P. Devgan, Advocate for the petitioner.

Mr. J.S. Ghuman, DAG, Punjab.

Mr. Umesh Aggarwal, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for pre-arrest bail has been filed by petitioner Nirbhay Singh, an accused in FIR No.25 dated 01.02.2019, for offences under Sections 323, 324, 148, 149 IPC (Section 326 firstly added vide General Diary No.19 dated 13.04.2019 and later on deleted and subsequently, Sections 307, 427, 336 IPC and Sections 25 and 27 of Arms Act vide General Diary No.18 dated 24.01.2021 and later on Sections 326 and 379 IPC vide General Diary No.17 dated 11.02.2021), registered with Police Station Gharinda, District Amritsar Rural.

Briefly stated the facts of the case as per prosecution story are that, on 14.01.2019 Sukhwinder Singh was sitting at his stall of fruits

and vegetables at Rajatal, then Balwinder Singh son of Tara Singh, resident of that very village abused Sukhwinder Singh without any reason; Sukhwinder Singh informed his son Nirvail Singh about the episode on that very day in the evening; complainant Nirvail Singh then convened panchayat of his village where Balwinder Singh was summoned, however, Balwinder Singh did not appear there; on 18.01.2019 at about 3.00 PM, when the complainant was standing near the stall of his father, whereas, Balwinder Singh was playings cards near taxi stand, Rajatal, the complainant went to Balwinder Singh and enquired from him as to why, he had abused his father, that resulted in exchange of hot words and a scuffle between two, however, people present at the spot intervened and separated them; Balwinder Singh went home, whereas, the complainant got busy in doing his other work; on the same day, at about 6.00 PM, when complainant accompanied by his nephew Manjinder Singh son of Nirmal Singh and Gurpreet Singh son of Gulab Singh were talking with each other near the vegetables stall of father of the complainant, in the meanwhile, Balwinder Singh son of Tara Singh armed with a dater, Kashmir Singh son of Tara Singh armed with a kirpan, petitioner Nirbhay Singh son of Pargat Singh armed with a datar, Gursahib Singh son of Jagir Singh armed with a datar, Veer Singh son of Balwinder Singh armed with 12 bore riffle, Balraj Singh son of Kashmir Singh armed with a pistol, Navdeep Singh son of Pargat Singh armed with a riffle, Gurbhej Singh son of Jagir Singh empty handed, all residents of Village Rajatal came to the spot; Gurbhej Singh raised a

lalkara that complainant side should be caught and killed for fighting with Balwinder Singh; Nirbhay Singh aimed a datar blow at Manjinder Singh, Manjinder Singh raised his right hand and the datar hit his little finger, resulting in its amputation and falling down; datar blow also hit on the adjoining finger of little finger; thereafter, Kashmir Singh son of Tara Singh gave a kirpan blow to Manjinder Singh, hitting him on index finger of his left hand; Balwinder Singh gave a datar blow to Manjinder Singh, hitting him on forehead; after receiving injuries, Manjinder Singh fell down; in the meanwhile, Gursahib Singh gave a datar blow to Gurpreet Singh son of Gulab Singh, hitting him on his cheek and teeth of left side; resultantly, Gurpreet Singh fell down; when the complainant tried to intervene, then Veer Singh son of Balwinder Singh fired a shot from his 12 bore gun at the complainant and the pellets hit on left side of chest and on bicep of left arm of complainant and he fell down; thereafter, Balraj Singh son of Kashmir Singh fired shots from his pistol; Navdeep Singh son of Pargat Singh fired shots from his riffle, hitting the vegetable stall; in the meanwhile, Bhagwant Singh of Lakha Singh, resident of the village brought a blue colour Sonalika tractor of Gurbhej Singh having a loadar at its front and rammed it, hitting the vegetable stall, damaging it extensively, whereas, the other assailants took away the entire articles of the stall; on alarm being raised by the complainant and other victims, then Sukhwinder Singh-father and Karnail Singh, younger brother of the complainant came forward; then all the assailants ran away from the spot along with their respective weapons; on matter being reported to the

police, formal FIR was registered.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions at Amritsar, craving for grant of pre-arrest bail. However, his request was declined and he has knocked at the door of this Court, praying for grant of similar relief, which request is being opposed by the State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record.

Pre-arrest bail is a discretionary equitable relief, which is to be granted by the Court in rare and exceptional circumstances to save the innocent persons from harassment and inconvenience and not to provide protective umbrella to the criminals enabling them to avoid arrest and interrogation by the investigating agency.

The allegations against the petitioner-accused are very serious that he along with his co-accused while armed with dangerous weapons including sharp edged weapons and fire arms had formed an unlawful assembly and committed rioting, attacking the complainant and his nephew Manjinder Singh, besides one Gurpreet Singh in pursuance of common object of the unlawful assembly, since all the assailants including the petitioner, total 08 in number, carrying dangerous weapons had come to the spot together and then they had attacked the complainant, his nephew and person standing along with him, namely, Gurpreet Singh and after the incident had left together, goes to show that the petitioner along with his co-accused had a common object of attacking complainant Manjinder Singh and Gurpreet Singh.

In terms of Section 149 IPC, every member of unlawful assembly is guilty of offence committed in prosecution of common object, therefore, the petitioner cannot plead and highlight the role in the incident only saying that he is not responsible for what the other assailants had done. He is equally responsible for the criminal acts committed by his co-accused in pursuance of common object of the unlawful assembly. The complainant had received pellets injuries, as a result of being shot by Veer Singh, co-accused of the present petitioner. Thus, on account of gravity and seriousness of allegations, the petitioner is not entitled to grant of pre-arrest bail.

Furthermore, custodial interrogation of the petitioner is necessary for complete and effective investigation, so as to effect the

recovery of weapon used in the incident and to find out as to how the incident was planned and executed, the role played by each one of the assailants, from where the weapons were procured and where they were disposed of/concealed after the incident. If custodial interrogation, which is more elicitation oriented, is denied to the investigating agency that shall leave many loopholes, lacuna and gaps in the investigation, adversely affecting the case of prosecution, which is uncalled for. Grant of pre-arrest bail in this case would obstruct and stifle the free and fair investigation.

The apprehension expressed by State counsel that in case, the petitioner is granted pre-arrest bail, there is a likelihood of petitioner indulging in giving threats or inducement to the prosecution witnesses and absconding even, in the process, harming the prosecution case and delaying it also, which is uncalled for.

Although, learned counsel for the petitioner has stated that there is a counter version of the incident recorded, vide General Diary No.13 dated 03.02.2019 against the complainant and his co-accused, namely Sukhwinder Singh son of Shingara Singh, Gurpreet Singh son of Gulab Singh, Manjinder Singh son of Nirmal Singh, Punjab Singh son of Jaimal Singh, Satnam Singh son of Mukhtar Singh, Manriasat Singh son of Suba Singh, Sahibdeep Singh son of Satnam Singh and Suba Singh son of Jaimal Singh, all residents of village Rajatal, containing the allegations that Nirvail Singh had caused injury on the right side of forehead of Balwinder Singh with a datar, while Satnam Singh and

Punjab Singh have caught hold from his arms. May it be so, the culprits named in the counter version shall have to answer for their acts of omission and commission but here we are to see the role played by the present petitioner in the episode.

Thus, keeping in view the totality of circumstances, the petition is bound to fail and is dismissed accordingly.

23.07.2021

sumit.k

(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No