

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8085-2020(O&M)
Date of decision :-26.7.2021

Smt.Shakuntla @ Babli and another

..... Petitioners

Versus

State of Haryana

..... Respondent

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

Present : Mr.S.S. Narula, Advocate
for the petitioners.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Cases taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by Smt.Shakuntla @ Babli, aged about 43 years and her son Himanshu, aged about 19 years, residents of village Khijarpur Ahir Majra, Tehsil Ganaur, District Sonipat, both of them being accused in FIR No.436 dated 6.10.2019, under Sections 148, 149, 323, 452, 506 IPC (Sections 307 and 325 IPC added later), registered with Police Station Ganaur, District Sonipat.

Briefly stated, the facts of the case as per the prosecution story are that on 5.10.2019 at about 7:00 a.m. when complainant Sanjeet along with his father Dharampal had gone to their fields, then Rohtash asked

Dharampal to compromise the matter with regard to wall; Dharampal replied that the wall belonged to them, which made Rohtash annoyed and he threatened to kill Dharampal; thereafter Dharampal returned home, whereas his son Sanjeet, the complainant went to attend his duties; at about 8:30 p.m. when the complainant reached his house, then Rambir having an iron pipe, his two sons Himanshu and Abhishek having SUAS (bodkins), wife Shakuntla alias Babli having a wooden baton and daughter Ms. Sheetal empty handed were found giving beatings to Dharampal, father of the complainant; on an alarm being raised by the complainant and others, the assailants ran away from the spot along with their respective weapons; the matter was reported to the police; the injured was removed to hospital; he was medically treated and medico-legally examined. Initially the FIR was registered for the offences under Sections 148, 149, 323, 324, 452, 506 IPC and the petitioners/accused were granted pre-arrest bail by learned Sessions Judge, Sonipat. However, after offences under Sections 307 and 325 IPC were added, the petitioners had again approached the Court of Sessions at Sonipat for grant of pre-arrest bail in newly added offences. But their such prayer was declined by learned Sessions Judge, Sonipat inasmuch their such application was dismissed vide order 30.1.2020. As such, the petitioners have approached this Court asking for similar relief, which request is being opposed by learned State counsel.

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

First coming to the petition filed qua petitioner/accused Himanshu.

A perusal of the record goes to show that accused Abhishek was arrested by the police in this case on 21.1.2020 and he was granted regular bail by learned Sessions Judge, Sonapat vide order dated 13.5.2020 and copy of that order has been placed on record by the petitioners as Annexure P10. The role assigned to Abhishek is almost same as that of Himanshu i.e. they were having SUAS at the time of incident and they caused injuries to Dharampal therewith. The difference which arises now is that Abhishek had been granted regular bail after his arrest, whereas Himanshu is seeking pre-arrest bail, which is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

The allegations against petitioner/accused Himanshu are very grave and serious that he while armed with a SUA had hit Dharampal therewith causing him injuries. A perusal of MLR of injured Dharampal, copy Annexure P7 goes to show that multiple punctured (pin points) wound over chest and back of Dharampal were detected. The injured had been taken to PGIMS, Rohtak. The police had taken opinion regarding injuries from CHC Ganaur, which had opined that the injury No.2 seems to be dangerous to life, whereas injury No.3 having fracture 5th metacarpal seems to be grievous in nature.

Learned counsel for the petitioners stated that the opinion so given is doubtful since police should have got this opinion from PGIMS, Rohtak instead of CHC Ganaur. The opinion so given is not very firm and positive, rather in the form of injury No.2 seeming to be dangerous to life

and injury No.3 seems to be grievous in nature. According to the learned counsel for the petitioners from such type of opinion the injuries could be taken to be dangerous to life or grievous in nature.

Without entering the controversy with regard to type of language used while giving opinion with regard to the nature of injuries, it needs to be observed that as per the prosecution case, petitioner Himanshu while armed with SUA, his brother and co-accused Abhishek also having SUA, a pointed weapon; there being multiple punctured wounds over chest and back in the form of injury No.2, corroborates the prosecution story and it comes out that petitioner Himanshu and Abhishek carrying SUAS had repeatedly attacked Dharampal, causing him injuries on vital parts. Such type of person is definitely not entitled to discretionary relief of pre-arrest bail.

Learned State counsel has stated that though petitioner-Himanshu has joined the investigation but he had neither the weapon got used in the incident recovered nor rendered proper co-operation in the investigation.

Therefore, the custodial interrogation of the petitioner Himanshu is definitely required to effect the recovery of SUA, the weapon used by him 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 used in the incident were procured and where they were concealed/dumped after the incident. In case custodial interrogation of the petitioner - Himanshu is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation

being carried out adversely, which is not called for.

The grave and seriousness of allegations against petitioner – Himanshu also disentitles him to grant of pre-arrest bail.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Therefore, the petition with respect to petitioner – Himanshu is doomed for failure and is dismissed accordingly.

As far as the present petition filed by petitioner/accused Shakuntla @ Babli, a woman aged about 43 years is concerned, at the relevant time she was statedly carrying a wooden stick and the injury attributed to her is simple in nature; she has already joined the investigation and her custodial interrogation is not found to be necessary. Therefore, she deserves to be granted concession of pre-arrest bail. The interim bail granted to her on 25.2.2021 is made absolute, subject to her fulfilling following conditions:

- (i) that she shall make herself available for interrogation by a police officer as and when required;
- (ii) that she shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that she shall not leave India without the previous permission of the Court; and

(iv) that she shall surrender her passport before the Investigating Officer and if she is not having passport, then shall file the affidavit in that regard.

In case the petitioner Shakuntla @ Babli violates any term and condition on which the bail has been granted to her, the prosecution would be entitled to apply for cancellation of bail to her.

Thus, the petition filed by petitioner Shakuntla @ Babli is allowed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

(H.S. MADAAN)
JUDGE

26.7.2021
Brij

1. Whether reportable? No
2. Whether speaking / reasoned? Yes