

105.

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

CRM-M-11671-2021

Date of decision: 15.03.2021

Babu Ram and another

... Petitioners

versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.S. Rai, Senior Advocate, with
Mr. Gautam Dutt, Advocate, for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

Mr. Jaivir Yadav, Advocate, for the complainant.

HARI PAL VERMA, J.

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioners in case FIR No.0072 dated 19.02.2021 registered under Sections 148, 149, 323, 452, 506 of IPC (Sections 307 & 325 of IPC added lateron) at Police Station City Sohna, District Gurugram.

The aforesaid FIR was registered on the complaint made by Satish son of Hoshiar Singh, working as Security Supervisor in GLS Company Damdama Road, Sohna. As per FIR on 17.02.2021, one Neeraj, who used to supply water through tanker in the society and with whom a dispute was going on regarding supply of water, had hit his Sonalika tractor with the tractor belonging to complainant's Company and thus caused

damage and thereafter left away. However, on 18.02.2021 at about 3.00/3.30 PM, said accused Neeraj again came to the Company with a water tanker and when the Chief Security Incharge Narender asked him about the damage caused to the tractor of the company, then Neeraj started misbehaving with him. Neeraj made a phone call to 20-25 boys asking them to reach GLS Company with weapons. After some time, a vehicle make Fortuner reached there in which accused-petitioner No.1 along with co-accused followed by scooty occupied by accused-petitioner No.2 and his son came and Narender also came outside of his office. Then all the assailants started beating Narender with *lathis*, *dandas* and rods and left the spot. Thereafter, the complainant and his associates after lifting the injured Narender took him in the office and in the meantime, the accused Neeraj armed with hammer reached there in a car make Baleno, whereas the other co-accused reached there in different vehicles and 15-20 other co-accused persons after scaling the wall also entered in the premises of the Company and again started beating Narender, who at that time was already unconscious. The accused also started beating Rajiv, Babu Lal and Govind Ahuja and one of the accused was heard saying to his other co-accused that one who is carrying country made pistol should fire at Narender as he is the hindrance in their way so as to commit theft. On hearing the noise, several persons gathered at the spot and on seeing them, all the assailants fled away from the spot and reiterated further threat to the complainant party with their lives.

Learned senior counsel appearing on behalf of the petitioners has argued that the petitioners have falsely been implicated in the case. It is

Narender who initially gave slap and fist blows to Neeraj who had reached in the premises of the Company so as to unload the water tanker and on hearing the noise, a number of people gathered at the spot. There was stone pelting from both sides and in this process, injuries were suffered by both the parties. Rather it was Neeraj who was coming out after leaving the water tanker in the Company after 3 o'clock, then Narender Yadav who is working in the Company, intercepted his tractor with the tractor of Kalu and caught him from the collar, pulled him down from the tractor and after beating him up with slaps-punches, snatched his aadhar card and a sum of Rs.200/- forcibly. As soon as he (Neeraj) rescued himself, Narender caught hold of him and threatened to kill him. He called some Guard, namely, Vijay and asked him to bring 5-7 boys to finish Neeraj in the fields and pour concrete upon him. Upon getting chance Neeraj called his father i.e. Petitioner No.1 over phone, who came and rescued Neeraj from those persons, then Babu Lal, Narender Yadav, Rajiv Yadav, Ajab Singh and Ahuja assaulted their persons. He further submits, even Neeraj has also given an application for impartial investigation in the case, but no action thereof has been taken on such application. Initially the FIR was registered under Sections 323, 452 and 506 of IPC, but thereafter on the opinion of the doctor regarding the injuries on Rajeev Kumar and Narender, Section 325 IPC was added on 23.02.2021. Further, on the basis of statement of Narender wherein he had stated that Baburam put a country made pistol on his right temple and tried to fire, the offence under Section 307 IPC was also added on 25.02.2021, whereas the accused had never fired and there is no fire arm injury in the case. There is no criminal history of the petitioners and therefore, their

custodial interrogation is not required.

On the other hand, learned State counsel as well as counsel for the complainant have argued that in the case in hand, the accused have caused as many as 18 injuries which includes 4 injuries to Rajiv Kumar, 7 injuries on the person of Narender, 4 injuries to Govind Ahuja and 3 injuries to Babu Lal. It has been argued that the petitioners caused injuries in a well-planned manner and after committing the offence, they again reached the premises of the company and again caused injuries.

I have heard learned counsel for the parties.

Mr. Jaivir Yadav, learned counsel for the complainant has produced a medical record of the injured-Rajiv Kumar and the injuries on Narender, who was initially examined by the government Medical Officer and thereafter was taken to Medanta Hospital. The doctor opined that *“degenerative changes are seen in the spine. Fracture of left transverse process of L2 vertebra and D11 vertebral body. Fracture of left sided 11th rib posteriorly noted”*.

Noticing the fact that in the present case, 4 persons i.e. Rajiv Kumar, Narender, Govind Ahuja and Babu Lal were injured and they suffered as many as total 18 injuries on their persons, this Court does not find any reason to admit the petitioners on anticipatory bail. Hon'ble Supreme Court in the case of ***P. Chidambaram Versus Directorate of Enforcement (SC) 2019 (4) RCR (Criminal) 875*** has held that the power under Section 438 Cr.P.C. is extraordinary in nature and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The anticipatory bail is not to be granted as a

matter of rule, rather, it has to be granted only when the Court is convinced that the exceptional circumstances exist to resort to such extraordinary remedy. The relevant paragraph No.67 of the said judgment reads as under:-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the Court is convinced that the exceptional circumstances exist to resort to that extraordinary remedy.”

Accordingly, the present petition is dismissed.

(HARI PAL VERMA)
JUDGE

15.03.2021
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No