

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

(1) CRM-M-24002-2021 (O&M)

Ashok Kumar @ Pappu

...Petitioner

Versus

State of Punjab

...Respondent

(2) CRM-M-24760-2021 (O&M)

Sourav Haryanvi @ Sourabh

...Petitioners

Versus

State of Punjab

...Respondent

Date of decision: 13.07.2021

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

Present: Mr. Angel Walia, Advocate for the petitioner
in CRM-M-24002-2021.

Mr. L.M. Gulati, Advocate for the petitioner
in CRM-M-24760-2021.

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

Mr. Rahul Bhargava, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

By this order, the aforementioned petitions are decided

being arising out of the same FIR.

These petitions for pre-arrest bail under Section 438 Cr.P.C. have been filed by petitioners Ashok Kumar @ Pappu and Sourav Haryanvi @ Sourabh, both of them being accused in FIR No.90 dated 03.05.2021, for offences under Sections 307, 323, 506, 148, 149 IPC and Sections 25 and 27 of Arms Act, registered with Police Station Division A, Amritsar.

Briefly stated facts of the case as per prosecution story are that, complainant Kamaldeep Singh along with his sons, namely, Simranjit Singh and Hargobind Singh had put a counter near City Centre within jurisdiction of Police Station A-Division, Amritsar for the purpose of booking tickets of deluxe buses; that on 02.05.2021, Chand and Balram told Simranjit Singh, son of the complainant that they shall have to pay Rs.5000/- per month for keeping booking counter at City Centre; on 03.05.2021 at about 3.30 PM, while the complainant along with his sons was present at City Centre, in the meanwhile, Chand and Haryanvi came there on a motorcycle and set up their counter at place which was being used by complainant and his sons for placing their counter; when complainant and his sons offered resistance, then Haryanvi gave slaps on the face of Hargobind Singh; several people gathered at the spot who pacified the parties; thereafter, Chand and Sourav Haryanvi @ Sourabh left that place; after about 10 to 15 minutes, Chand and Sourabh @ Haryanvi along with 6-7 persons which included Sodhi, Balram and Pappu came to the spot; Chand

gave a datar blow from reverse side to Simran; thereafter, Sodhi, Balram and Haryanvi who were armed with pistol and revolver fired shots towards the complainant side; on alarm being raised, all the assailants ran away from the spot along with their respective weapons; on matter being reported to the police, formal FIR in the matter was recorded.

Apprehending their arrest in this case, petitioners-accused had approached the Court of Sessions at Amritsar seeking pre-arrest bail, however, they were unsuccessful there. As such, they have approached this Court by way of filing the present petitions, praying for grant of similar relief, which are being resisted on behalf of the State and complainant.

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

Learned counsel for the petitioners have contended that it is a case of no injury and the version given by the complainant is unnatural and not believable.

Counsel for petitioner Ashok Kumar @ Pappu has argued that even as per prosecution story, petitioner is not shown to have caused any injury to anyone from the complainant side, whereas, according to counsel for petitioner Sourav Haryanvi @ Sourabh, as per prosecution story, he had given slaps on face of Hargobind Singh during earlier part of the incident, whereas, though, in the second part of incident, he was allegedly having a fire arm but nobody was injured

as a result thereof.

Learned counsel for the petitioners have contended that petitioners are ready and willing to join the investigation, therefore, they be allowed to do so and granted concession of pre-arrest bail.

Whereas, learned State counsel assisted by counsel counsel for complainant have opposed the petitions vehemently, stating that during the incident fire arms were used. Though, petitioner Ashok Kumar @ Pappu is not attributed any injury but he was there along with the other assailants and was part of the unlawful assembly having common object and whereas, Sourav Haryanvi @ Sourabh took active part in the incident; in the first part of incident, giving slaps to Hargobind Singh and in the second part, possessing a fire arm and firing shots therefrom upon persons from complainant side, obviously showing intention to kill them, though, fortunately, the complainant and his sons escaped being hit by the bullets.

Learned State counsel has further contended that the petitioner are part of a gang and fleeced money from common persons and they by firing at a public place have committed heinous crime and after the incident, the local police had collected 04 empty shells of 7.65 bore from the spot. Therefore, no ground for grant of pre-arrest bail to them is made out.

After hearing the rival contentions and going through the record, I find that the petitions are bound to fail.

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.

Here the petitioners are specifically named in the FIR. Though, petitioner Ashok Kumar @ Pappu is not attributed any injury to any person from complainant side but the very fact that he had accompanied the assailants, who had taken active part in the incident and thereafter, escaped along with them, goes to show that he was member of the unlawful assembly and under Section 149 IPC, every member of unlawful assembly is guilty of the offence committed in prosecution of the common object. Therefore, he cannot wash his hands off the matter, stating that he had not caused any injury to any person from the complainant side, therefore, he has not committed any offence. He is equally guilty along with the other assailants, who had taken active part in the incident in terms of Section 149 IPC.

Now coming to second petitioner Sourav Haryanvi @ Sourabh, his active participation in the incident comes out to be there. In the first part, when he slapped Hargobind Singh son of the complainant and during the second part, having a fire arm, fired shots therefrom, which was with an intention to kill. The fact that complainant and his sons had a miraculous escape and were not hit by

the shots, does not lessen the gravity of the criminal acts committed by the assailants. The facts and circumstances of the case point out towards intention of the assailants to kill the complainant and his sons. The petitioners cannot take advantage of the fact that complainant and his sons had not received any injury and had escaped unhurt. We are to examine the act and conduct of the assailants, so as to find out as to what was their intention in carrying fire arms and then firing shots therefrom. It is not a case of assailants firing in the air to scare away the complainant and his sons but as per case of prosecution, the assailants including petitioner Sourav Haryanvi had fired at complainant and his sons with intention to kill them, however, fortunately, they escaped without being hit by the shots. The incident had occurred at a public place; recovery of 04 empty shells of 7.65 bore corroborates the prosecution story of use of fire arms during the incident.

Custodial interrogation of both the petitioners is necessary to find out as to how the incident was planned and executed, the part played by each of the accused, from where the fire arms and ammunitions had been procured and where those were disposed of/concealed after their use in the incident, the motive for the incident etc. Custodial interrogation is more elicitation oriented since a person couched in comparative safety of the pre-arrest bail would certainly not disclose all the facts within his knowledge being aware of the fact that

the information so given by him may be used against him during the trial.

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.

Custodial interrogation of Sourav Haryanvi @ Sourabh is also necessary to effect the recovery of weapon used by him in the incident. In case, it 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.

Thus, keeping in view the gravity and seriousness of allegations against the petitioners, the necessity of their custodial interrogation and considering the apprehension expressed by the State counsel that if granted pre-arrest bail, they would try to threaten, intimidate and influence the prosecution witnesses, which cannot be brushed aside lightly, all such factors lead to only one conclusion that the prayer for pre-arrest bail should be declined to both the petitioners. Accordingly, the petitions being without merit stand dismissed.

13.07.2021
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(H.S. MADAAN)
JUDGE

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