

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

CRM-M-26424-2021 (O&M)
Date of Decision:- 3.9.2021

Yogender ... Petitioner

Versus

State of Haryana and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rishi Malhotra, Advocate for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking quashing of FIR No.550 dated 23.9.2020 registered under Sections 224, 458, 212/120-B IPC at Police Station Camp Palwal, District Palwal and also the chargesheet dated 10.12.2020 (Annexure P-7).
2. The FIR (Annexure P-3) was lodged at the instance of Lakhpat Singh wherein it is alleged that he is working as a Home Peon at the residence of Shri Mahesh Judge Sahib and that on 23.9.2020, when he was present on the first floor of the house, he noticed that a boy was hiding and was carrying bolt of the door in his hand and who launched an attack upon the complainant. However, the complainant was able to nab him. Upon hearing the clamour of the scuffle, the members of the family also came there and upon enquiry, the boy disclosed his name as Yogender. The police was called and the boy was handed over to the police.

3. It is further the case of prosecution, as per the “police proceedings” recorded in FIR itself, that when the police had come to the spot, then the petitioner escaped under the cover of darkness.
4. It may here be mentioned that this Court realising the sensitive nature of the matter and while acceding to request of the petitioner had referred the parties to Mediation and Conciliation Centre, Palwal but as per letter alongwith annexures, received from Civil Judge (Junior Division-cum-JMIC) Palwal, the result of mediation has been “unsuccessful”.
5. The learned counsel for the petitioner, while assailing the FIR and also the subsequent proceedings, has vehemently argued that infact the petitioner is a young boy, aged about 18 years, and is a renowned Athlete and had been studying in Modern School, Sector-17, Faridabad where Ms. Sonam, daughter of Shri Mahesh Kumar, Additional Sessions Judge, Faridabad was also studying and who was a singer. The learned counsel for the petitioner submits that Ms. Sonam and the petitioner shared the same birthday i.e. 20th September and were very good friends having studied together in the same school and the petitioner used to visit Ms. Sonam at her residence i.e the residence of her father, in the presence of her parents and that the intimacy between Ms. Sonam and the petitioner would be evident from the fact that on 20.9.2018 (birthday of both the petitioner and of Sonam), the same was celebrated by way of a common party hosted at Golden Galaxy Hotel, Faridabad and that names of the petitioner as well as Sonam were written on the birthday cake as both shared the birthday. It is submitted that the said birthday was celebrated in the presence of relatives and common friends of both of them and that the hotel had been booked by father of Ms. Sonam. It

is submitted that later when Sonam's father was transferred from Faridabad to Jhajjar, his family stayed back in Faridabad. The learned counsel, in order to buttress his aforesaid contentions has drawn the attention of this Court to various photographs of the petitioner in the company of Sonam, which have been annexed as Annexure P-2. The said photographs also include some photographs wherein the petitioner and Ms. Sonam are shown to be celebrating their birthday and there is a three-tier birthday cake wherein name of the petitioner and of Ms. Sonam is inscribed.

6. It has been submitted that subsequently when Sonam's father had been posted at Palwal in the year 2020, the petitioner did not attend the birthday party hosted on 20.9.2020 to celebrate the birthday of Ms. Sonam at Palwal. However, Ms. Sonam called the petitioner by sending a message through a common friend and accordingly, the petitioner went to the residence of the judicial officer at Palwal at about 4 p.m. on 23.9.2020 and was nicely treated in the house of Ms. Sonam and her mother also served tea to him and other refreshments. The learned counsel has submitted that subsequently under a planned conspiracy, Ms. Sonam's father got the petitioner implicated falsely through his orderly, Shri Lakhpat (complainant). The learned counsel has submitted that the petitioner has been got falsely implicated by Ms. Sonam's father i.e. Mr. Mahesh through his home-peon as he did not approve of the relationship of the petitioner with his daughter, there being a difference in status of both the families. The learned counsel has also pointed out that the petitioner's mother had infact also made a complaint to Hon'ble the Chief Justice on 21.11.2020 (Annexure P-5) regarding the alleged misuse of power by the father of Ms. Sonam.

7. The learned counsel has also argued that in any case, no offence under Section 224 IPC can be said to be made out as the petitioner had not been charged when he is alleged to have fled away from the spot.
8. I have considered the aforesaid submissions.
9. It is apposite to first of all refer to provisions of Section 224 IPC, which read as under :-

“224. Resistance or obstruction by a person to his lawful apprehension.—

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.”

(emphasis supplied)

10. The words “*or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence*”, as existing in section 224 IPC are significant. In the instant case, the petitioner had been detained initially by the complainant and had been handed over to the police officials when they reached at the spot and while the police was conducting the proceedings, he ran away from the spot. In these circumstances, he can be said to have been apprehended by police officials in discharge of their official duties having

been informed about commission of an offence under Section 458 IPC by the petitioner. As such, it cannot be said that the petitioner was not legally detained at the time when he is alleged to have run away from the spot.

11. Though, this Court does find that the allegations to the effect that petitioner ran away from the spot right under the nose of the police officials under cover of darkness is quite improbable but FIR can not be quashed at initial stage just on account there being chances of improbability. It also remains unexplained that if the petitioner was so swift and smart to escape from the police custody then as to how the complainant was able to nab the petitioner without having sustained any injury, though the petitioner is alleged to be carrying a bolt of the door.
12. A perusal of the photographs (Annexure P-2) indicates that the petitioner and Ms. Sonam were on good terms and were friends and it appears that even their families were fully aware about their friendship. The petitioner and Ms. Sonam had studied in the same school and as such, their friendship is quite possible. In these circumstances when it is apparent that the petitioner and Ms. Sonam knew each other pretty well and infact their families were also aware about their friendship, it rather remains unexplained as to why in the FIR, the petitioner is being referred to as unknown person. Such a reference would suggest that some facts are being concealed.
13. Though, the photographs(Annexure P-2) and the manner in which FIR has been recorded do tend to show that there may not be any element of truth in the allegations, but at this stage this Court cannot proceed to quash the FIR solely on the basis of the said photographs inasmuch as the authenticity of

the said photographs is yet to be established which can only be established during the course of trial when the prosecution would also be granted an opportunity to cross-examine the witnesses, as may be examined by the petitioner to prove the said photographs.

14. In view of the aforestated discussion, this Court does not find any case for quashing of FIR at this stage. The petition is sans merit and is hereby dismissed.
15. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case and the petitioner would be at liberty to raise all the pleas, as have been raised herein before the trial Court at appropriate stage.

3.9.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No