

CRM-M No.31973 of 2021

Date of decision: 10.08.2021

Gurpreet Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amandeep Singh Manaise, Advocate for the petitioner.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.70 dated 03.07.2021 registered under Sections 452, 326, 323 and 34 IPC at Police Station Ghuman, Police District Batala, District Gurdaspur.
3. Learned counsel contends that a fight ensued between the parties as a result of which FIR No.70 dated 03.07.2021 was registered under Sections 452, 326, 323 and 34 IPC at Police Station Ghuman, Police District Batala, District Gurdaspur against the petitioner's side vide DDR No.27 dated 25.07.2021 was registered under Sections 326, 324, 323 and 34 IPC at Police Station, Ghuman, Police District Batala, District Gurdaspur against the complainant's side, that injury attributed to the complainant i.e. Injury No.1 is an incised wound measuring 4cm x

0.5 cm present on parietal region of skull on right side of Hardeep Singh, while injury No.3 is an incised wound measuring 5cm x 1 cm present on anterior shin, 5 cm below right knee joint and on the basis of x-ray report, injury No.3 alone has been found to be grievous in nature, that since there are injuries on both side, and it has to be determined as to who is the aggressor, the petitioner be released on pre arrest bail.

4. I have considered the submissions of learned counsel and with his able assistance have gone over the record. As per the prosecution, FIR was registered on the statement of complainant-Malkiat Singh son of Kuldeep Singh that while serving in the Army he had come to his house at village Ainekot on 16.06.2021 on leave for 30 days, that he had joint ownership of motor of water with his paternal uncle Hardeep Singh installed in the agricultural land adjoining each other, that on 27.06.2021, the complainant's father-Kuldeep Singh had gone to his fields of paddy crop where he saw his brother Hardeep Singh had diverted water from their fields towards his fields regarding which complainant's father-Kuldeep Singh lodged a protest with his brother Hardeep Singh whereafter Hardeep Singh besides complainant's father Kuldeep Singh both went back to their house. However, on the same day i.e. 27.06.2021 at about 09.00 A.M., when the complainant, his father and rest of family members were present in their house, his paternal uncle Hardeep Singh and his son Gurpreet Singh (petitioner) brandishing *datars* rained blows on their house gate besides hurling abuses and threw open the gate of the house of the complainant forcibly whereupon complainant's paternal

uncle-Hardeep Singh, armed with *datar* besides Gurpreet Singh (petitioner) armed with *datar* and complainant's aunt Jagwinderbir Kaur wife of Hardeep Singh empty handed entered the house of the complainant, with complainants aunt Jagwinderbir Kaur raising *lalkara* to catch hold of the Fauji and not letting him go scot-free on account of daily petty quarrels. In the meantime, Gurpreet Singh (petitioner) gave *datar* blow with its reverse side on the head of Kuldeep Singh who escaped with minor injuries on his head on account of his having tied a *parna* on his head, and when the complainant came forward to rescue his father, Hardeep Singh (father of the petitioner) gave him a reverse *datar* blow which hit him on the left side of his head. In the meantime, Gurpreet Singh (petitioner) gave *datar* blow to the complainant, who raised his left hand to ward off the blow, but the same hit on the thumb of his left hand and his left thumb was almost cut off. Due to serious injuries, complainant, his father Kuldeep Singh and mother Harjinder Kaur raised alarm whereupon all accused along with their respective weapons fled from the spot whereafter father of the complainant admitted the complainant in Amandeep Hospital, Amritsar, where the Doctor operated upon his thumb and on 02.07.2021, he along with record of Amandeep Hospital went to Government Hospital, Ghuman and got conducted his medico legal examination and although respectable persons tried to effect a compromise but the same could not be effected.

4. I have considered the submissions of learned counsel for the petitioner and gone over the record.

5. Learned counsel for the petitioner has conceded that injury attributed to the petitioner on the thumb of left hand of complainant is by means of *datar* and that the same had resulted in almost complete severance of the thumb of the complainant and further that the complainant got treatment for said injury from Amandeep Hospital, Amritsar where said injury was diagnosed as “*Assault injury on the left thumb and near total amputation*” and that on x-ray examination of the complainant, the injury attributed to the petitioner has been declared as grievous. It is also admitted that investigation is in progress and weapon of offence i.e. *datar* allegedly used in the commission of the offence is yet to be recovered from the possession of the petitioner. Reference is made to the decision of Hon’ble the Supreme Court in **P. Chidambaram vs. Directorate of Enforcement (SC) 2019 (4) RCR (Criminal) 875**. Relevant extract of the same is reproduced as under:-

“67. Ordinarily, arrest is a part of the process of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC 1973 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 exceptional circumstances exist to resort to that extraordinary remedy.”

6. No doubt, DDR has been registered by the petitioner’s father against the complainant and his family members and injury attributed to the complainant is grievous in nature, but I am of the view that no person can take the law in his own hand and on account of gravity of the offence on account of inflicting of a grievous injury on the complainant which almost resulted in severance of his left thumb, I do not find any exceptional circumstances warranting grant of concession of pre-arrest bail to the petitioner, especially since the weapon used in the commission of the offence is yet to be recovered, besides custodial interrogation of the petitioner is also required.

8. Accordingly, finding no merit in the prayer for pre arrest bail, the petition for anticipatory bail is *dismissed*.

(B.S. Walia)
Judge

10.08.2021

‘Rajneesh/Amit’

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No.