

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

1. CRM-M-26831-2020(O&M)

Mubarik

..... Petitioner

Versus

State of Haryana

..... Respondent

2. CRM-M-31165-2020(O&M)

Mustak

..... Petitioner

Versus

State of Haryana

..... Respondent

Date of decision :-11.1.2021

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

Present : Mr.R.S. Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate
for the petitioner in **CRM-M-26831-2020**

Mr.Mohammad Arshad, Advocate
for the petitioner in **CRM-M-31165-2020.**

Mr.Tanuj Sharma, AAG, Haryana.

Mr.Sarfraj Hussain, Advocate
for the complainant.

H.S. MADAAN, J.

Cases taken up through video conferencing.

Vide this order, I shall dispose of two petitions for grant of pre-arrest bail i.e. **CRM-M-26831-2020** filed by petitioner Mubarik and **CRM-M-31165-2020** filed by petitioner Mustak, both of them being accused in FIR No.0183 dated 6.7.2020 for the offences under Sections 148, 149, 323, 324, 341, 452 and 506 IPC (added later on 120-B, 192, 193, 195 IPC), registered at Police Station Hathin, District Palwal.

CRM-23763-2020 IN
CRM-M-26831-2020

For the reasons mentioned in the application, the same is allowed and Section 326 IPC is ordered to be added in the head-note of the present petition. Registry is directed to do the needful.

Briefly stated, the prosecution story is that petitioner Mushtak son of Fatti, resident of Pachanka had submitted a written complaint at Police Station Hathin, District Palwal contending that on 15.6.2020, some altercation had taken place between him and Salim son of Khuda Bakhsh and others and he had received beatings in the said incident but he did not take any action; on the next day, when he was going to village Pachanka, carrying some domestic material and time was about 7:00 p.m., Islam son of Khuda Bakhsh, Saleem son of Nasru, Khursheed son of Sumeri intercepted him and started abusing him; the complainant asked them not to do so, then they started giving beatings to him with fist blows and slaps. During the

course of such beatings, Khursheed threatened the complainant also. The complainant rushed towards his house to save himself. Islam son of Khuda Bakhsh, Rafiq, Tafi, Nizam sons of Islam, Hameed son of Israyal, Nafees, Saleem sons of Nasru, Ajru Shakeel sons of Sahabu, Khursheed son of Sumeri, Shabnam wife of Rafiq, residents of village Pachanka armed with lathis, dandas, farmas and sharp edged weapons trespassed in his house and attacked the complainant. The complainant received serious injuries. Shabnam threatened to get registered a false case of rape against the complainant. After some time, the assailants left the spot. The complainant injured was taken to hospital, where he was medically treated. After some time, talks for compromise took place between the parties but were unsuccessful. Such written complaint had been received at Police Station Hathin on 1.7.2020 at 5:30 p.m. It may be mentioned here that earlier on 17.6.2020 on receipt of ruqa and MLR dated 16.6.2020 of Mushtak at police station in which three injuries had been mentioned, police party therefrom went to General Hospital, Palwal to record statement of injured. But injured was not available. On 18.6.2020 police officer submitted written application addressed to doctor at General Hospital, Palwal to record the statement of injured, who was declared to be fit. The injured had stated that he was not in his proper senses and he would get statement after discussion with his family. Therefore, the police party returned. On 1.7.2020. Mushtak met HC Manoj Kumar and submitted written complaint to him. From the perusal of complaint and MLR, HC Manoj Kumar found the matter to be doubtful and observed that report will be entered in roznamcha and on verification and investigation, action would be taken accordingly. FIR was registered. The

matter was investigated. Medical opinion was obtained. During the investigation, it transpired that the complainant along with other persons had entered into conspiracy, got inflicted the injuries fraudulently and got prepared false MLR and as a matter of fact, no incident as alleged by the complainant had taken place. It also came out that petitioner Mushtak, Mujib and Rashid along with Mubarik had got broken the bone from some unknown person and in conspiracy with the doctors of hospital at Hathin had got prepared false MLR. Mujib and Rashid were arrested in this case. They were interrogated and they admitted their involvement in commission of the crime. Mujib had handed over to the police a mobile phone used in the conspiracy.

Apprehending their arrest in this case, petitioners/accused had approached the Court of Sessions seeking grant of pre-arrest bail but their such applications were dismissed by the Court of learned Sessions Judge, Palwal vide orders dated 31.8.2020 and 21.9.2020, respectively. As such, they have approached this Court asking for similar relief by way of filing separate petitions.

Notice of the petitions was given to the respondents, who put in appearance through counsel. The complainant has also appeared through counsel.

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

Learned Senior counsel for the petitioner Mubarik has contended that such petitioner is working as a Pharmacist only and has got no connection with any hospital/doctor from where MLR of complainant

had been prepared and further inclusion of Sections 192, 193 and 195 IPC in the FIR is not permissible under the law. Both the petitioners were directed to join the investigation and were granted interim bail. As stated by learned State counsel, both the petitioners have since joined the investigation and no recovery is to be effected from them.

Admittedly, the doctor, who had actually examined the complainant and issued the MLR has not been arrayed as an accused in the present case, till now. If a false MLR was prepared by getting bone of injured broken by a friendly hand, it could not have possibly been done without the active connivance of the doctor conducting the medico legal examination of the injured and the doctor/Medical official carrying out the x-ray examination. Although according to the prosecution story, the petitioner Mubarik had managed a false MLR but he alone could not have possibly done so and as it comes out, he was not in a position to manage the same. Only during the trial, it would be found out whether the injuries had in fact been suffered by the injured in this case at the hands of the alleged assailants or those had been got inflicted through a friendly hand. The petitioners having joined the investigation with no recovery to be effected from them, their custodial interrogation is not found to be necessary. I find that the petitions deserve to be accepted. Therefore, the interim bail granted to petitioner Mubarik vide order dated 9.9.2020 and to petitioner Mustak vide order dated 18.11.2020 are made absolute subject to their fulfilling following conditions:

- (i) that the petitioners shall make themselves available for interrogation by the police officer(s) as and when required;

(ii) that the petitioners 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 the petitioners shall not leave India without the previous permission of the Court; and

(iv) that the petitioners shall surrender their passports before the Investigating Officer and if they are not having passport, then shall file the affidavit in that regard.

In case the petitioners violate any term and condition on which the bail has been granted to them, the prosecution would be entitled to apply for cancellation of bail to them.

The petitions are allowed accordingly.

(H.S. MADAN)
JUDGE

11.1.2020
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1. Whether reportable? No
2. Whether speaking / reasoned? Yes