

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

103

CRM-M-32983-2021.

Date of Decision: 16.08.2021.

Abdul Matin

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Monty Goyal, Advocate for petitioner.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This second petition under Section 438 Cr.P.C. has been moved by petitioner for grant of pre-arrest bail in case FIR No.180 dated 02.07.2021 under Sections 148, 307, 323, 324, 341 and 506 IPC read with Section 149 IPC, registered at Police Station Haibowal, District Police Commissionerate Ludhiana.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly on 30.06.2021 at about 9:15 PM, petitioner alongwith co-accused while armed with deadly weapons inflicted multiple injuries and that too on vital organs on the person of complainant-Pardeep Kumar. He further urges that though

registered on 02.07.2021 and as such there was inordinate delay of two days in registration of FIR and that too unexplained one. He further urges that no specific injury on the person of complainant-Pardeep Kumar has been attributed to the petitioner and further nowhere in the FIR it is mentioned that petitioner was armed with any weapon. He further urges that injury sustained by complainant-Pardeep Kumar, which attracted offence under Section 307 IPC, is allegedly attributed to co-accused Asnain. He further urges that petitioner has been named in the FIR solely for the reason that he is father of co-accused Asnain. He further urges that false implication of petitioner is well evident in view of the fact that at the time of alleged occurrence, he was in Civil Hospital, Ludhiana, for his treatment. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Mehardeep Singh, Additional Advocate General, Punjab, accepts notice on behalf of respondent-State. Complete copy of paperbook has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that on 30.06.2021 at about 9:15 PM, petitioner alongwith co-accused while armed with deadly weapons (sword, baseball bat and *daat*) constituted unlawful assembly and in prosecution of common object of said assembly inflicted as many as eleven (11) injuries on the person of injured/complainant-Pardeep Kumar. He further urges that

cheek in front of right ear resulting in separation of right ear lobe from right ear pinna, left scapular region, right scapular region, right fore-arm, right arm, middle of left lower leg, right lower leg and right ankle and as many as nine (9) injuries were caused by sharp-edged weapon, whereas two (2) injuries were caused by blunt weapons. He further urges that out of those injuries, one injury on head has been declared 'dangerous to life' attracting offence under Section 307 IPC. He further urges that there was no delay in registration of FIR as on account of sustaining multiple injuries and that too grievous one, complainant/injured-Pardeep Kumar was taken to L.M. Civil Hospital, Ludhiana, where he was medico-legally examined on 01.07.2021 at 1:20 AM (midnight), vide Medico-Legal Report No.MLR/VDC/995/2021, wherein as many as eleven (11) injuries by means of sharp as well as blunt weapons were found on his person. He further submits that on account of severity of injuries sustained by complainant/injured-Pardeep Kumar, he was referred to PGI, Chandigarh, for further treatment and then on reaching PGI, Chandigarh, statement of injured-Pardeep Kumar was recorded, on the basis of which FIR was registered. He further submits that earlier petition (CRM-M-29092-2021) for grant of pre-arrest bail moved by petitioner was dismissed as withdrawn, vide order dated 03.08.2021. He further urges that plea of *alibi* raised by petitioner can only be considered during trial as the person claiming said plea has to prove it by cogent evidence during trial. He further submits that there is no change in scenario after the dismissal of earlier petition moved by the petitioner. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner alongwith co-accused while armed with deadly weapons constituted unlawful assembly and in prosecution of common object of said assembly inflicted as many as eleven (11) injuries on the person of complainant-Pardeep Kumar. Allegedly, in view of nature of injuries sustained by complainant/injured-Pardeep Kumar, FIR was registered for the commission of offence punishable under Section 307 IPC as well. Earlier petition (CRM-M-29092-2021) for grant of pre-arrest bail moved by petitioner was dismissed as withdrawn, vide order dated 03.08.2021, which is reproduced as under:-

“After arguing at some length and realizing that this Court is not inclined to grant relief to petitioner, learned counsel for petitioner prays for withdrawal of instant petition.

In view of above, instant petition is dismissed as withdrawn.”

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation

is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

16.08.2021

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