

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

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CRM-M-39965-2021.

Date of Decision: 12.11.2021.

Sanjay

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ajay Kripal Singh, Advocate for petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

Fresh Power of Attorney filed on behalf of petitioner is taken on record.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Sanjay** in case FIR No.225 dated 29.08.2021 under Sections 148, 323 and 506 IPC read with Section 149 IPC (Sections 307 and 341 IPC added lateron), registered at Police Station Bahu Akbarpur, District Rohtak.

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 as per FIR version, allegedly five youngsters inflicted injuries to complainant-Surender and his wife Nisha. He further submits that as a matter of fact, petitioner is aged about 40 years and as such he cannot be termed as a youngster. He further

submits that no specific role in the commission of alleged offence has been attributed to the petitioner and further no motive to inflict injuries has been explained in the FIR. He further urges that no injury on the person of complainant-Surender and his wife Nisha, has been attributed to the petitioner and even otherwise there is no allegation of molestation on the part of petitioner. He further submits that nothing incriminating is to be recovered at the instance of petitioner. He further submits that car bearing registration No.HR-77C-1690 has already been sold by the petitioner to co-accused Manjit on 01.08.2021 i.e. even prior to the registration of instant FIR and except for the use of said car in the commission of alleged offence, there is no other allegation against the petitioner. 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.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that on 29.08.2021 at 10:30 AM, five youngsters came on a car, then four of them having their faces muffled inflicted injuries to complainant-Surender and his wife Nisha and on the basis of statement of complainant-Surender, instant case FIR was registered, however, injured-Nisha in her statement disclosed about the registration number of the car used in the commission of offence and accordingly offence under Section 341 IPC was added. He further submits that in his additional statement recorded on 12.09.2021, complainant-Surender disclosed the name of petitioner. He further urges that X-ray report of

complainant-Surender was obtained and doctor declared injury No.3 sustained by complainant-Surender, as 'dangerous to life' and accordingly offence under Section 307 IPC was added in the array of offence. He further urges that co-accused namely Sunny @ Katu, Mohan @ Moni and Ashwani @ Soni have already been arrested and they have got recovered sticks used by them in the commission of offence and also disclosed about involvement of petitioner as well in the manner that petitioner had inflicted injuries on private part of complainant-Surender. He further submits that recovery of wooden stick used by petitioner as well as car used in the commission of offence is yet to be effected at the instance of petitioner. He further urges that petitioner is habitual offender as apart from instant FIR, three (03) more case FIRs have been registered against him, details of which are as under:-

“(1) FIR No.57 dated 20.03.2007 under Sections 323, 452 and 506 IPC, registered at Police Station Meham.

(2) FIR No.181 dated 08.10.2014 under Section 174-A IPC, registered at Police Station Lakhan Majra.

(3) FIR No.858 dated 08.11.2019 under Section 174-A IPC, registered at Police Station City, Bhiwani.”

He further urges that though petitioner has been acquitted of charges in case FIRs No.57 and 181, as detailed above, but in case FIR No.858 dated 08.11.2019, as detailed above, he is facing trial. He further urges that petitioner is the main accused as he actively participated in the commission of offence in question. 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 of pre-arrest bail.

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 deadly weapons constituted unlawful assembly and in prosecution of common object of said assembly inflicted multiple injuries on the persons of complainant-Surender and his wife Nisha, whereas injury No.3 sustained by complainant-Surender has been declared 'dangerous to life'. As pointed out by learned State counsel, petitioner is habitual offender involved in as many as four (04) cases including instant FIR. 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

12.11.2021
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No