

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

CRM-M-40991 of 2020

DATE OF DECISION :- March 17, 2021

Ershan Khan

...Petitioner

Versus

State of Punjab

...Respondent

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

Present:- Mr. Nafeesh Ahmad Khan, Advocate for the petitioner.

Mr. J.S. Ghuman, DAG, Punjab.

Mr. M.S. Yadav, Advocate for the complainant.

The case has been taken up through Video Conferencing.

This petition for pre-arrest bail has been filed by petitioner Ershan Khan, aged about 32 years, resident of House No. 448, Telia Wali Gali, Nim Wala Chowk, Near Subani Building, Ludhiana, District Ludhiana, an accused in F.I.R. No. 26 dated 19.2.2020 registered with Police Station City 1, Malerkotla, District Sangrur for offences under Sections 341, 324, 323, 34 IPC (later on offence under Section 326 IPC was added).

Briefly stated the prosecution story is that on 17.2.2020 at about 12.30 P.M. while Mohd. Akhtar was going to Court Complex, Malerkotla on his scooter and had reached turning point of Street No. 01 then he was intercepted by accused Mehmood Ahmed and his son petitioner accused Ershan Khan along with Billu started abusing him. Billu had

handed over a Kirpan to petitioner accused Ershan Khan whereas Mehmood Ahmed pulled down Mohd. Akhtar from his scooter and slapped him. Billu had caught hold of complainant then petitioner accused gave Kirpan blow to him hitting on wrist of right arm which he had raised to ward off the blow. Petitioner accused gave another Kirpan blow to the complainant which hit him on his head as he bent downwards to save himself. The injured was removed to the hospital where he was medically treated and medico legally examined. Head injury was found to be simple in nature whereas injury on the wrist of right arm was opined to be grievous in nature.

On matter being reported to the police, formal F.I.R. was registered. Apprehending his arrest in this case, petitioner accused Ershan Khan had approached the Court of Sessions at Sangrur by moving an application for pre-arrest bail. His such application was assigned to Additional Sessions Judge, Sangrur, who vide order dated 1.12.2020, however, dismissed the same. Feeling aggrieved, the petitioner has knocked at the door of this Court craving for grant of similar relief. Notice of the petition was given to the State. The complainant has also put in appearance through his counsel.

I have heard learned counsel for the petitioner, learned counsel for the complainant and learned State counsel besides going through the record.

Learned counsel for the petitioner has contended that the present F.I.R is the outcome of the matrimonial dispute between sister of accused and brother of complainant; he had joined the investigation earlier and was granted bail, however, subsequently offence under Section 326 IPC was added when nature of injury was declared to be grievous after eight

months of the incident; the petitioner has since joined the investigation and has got the recovery effected, therefore, his custodial interrogation is not required and he be granted pre-arrest bail. Learned State counsel on instructions from ASI Pushpinder Singh has conceded the factum of petitioner accused having joined the investigation and got the recovery effected further stating that it being so, custodial interrogation of petitioner is not required. However, learned counsel for the complainant has opposed the petition stating that petitioner is the main accused, who has been attributed grievous injury to the complainant with a sharp edged weapon, therefore, his petition should not be accepted.

I have pointedly enquired from learned State counsel whether petitioner has misused the concession of bail granted to him when offences were bailable and one of the injury was declared to be grievous in nature and learned State counsel has informed that there are no allegations of misusing such concession of bail.

Thus keeping in view the totality of circumstances, I find that petition deserves to be accepted, the same is allowed. The interim bail granted to the petitioner on 21.12.2020 is made absolute, subject to the following conditions :-

- (i) he shall join the investigation as and when so directed.
- (ii) he shall appear in the Court on each and every date of hearing.
- (iii) he shall not give any threat or intimidation to the prosecution witnesses.
- (iv) he shall not leave India without prior permission of the Court.
- (v) he shall surrender his Passport before the Investigating Officer and if he is not having Passport

then shall file the affidavit in that regard.

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

(H.S. MADAAN)
JUDGE

March 17, 2021
p.singh

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