

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

CRM-M-45923-2019 (O&M)

Date of decision: 03.08.2021

Sandeep Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr. KDS Hooda, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Fateh Saini, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for pre-arrest bail has been filed by petitioner Sandeep Kumar, an accused in FIR No.76 dated 06.04.2019, for offences under Sections 148, 149, 323, 324, 452, 506 IPC (Section 326 IPC added later on), registered with Police Station Sadar Hansi, District Hisar.

In nutshell, the prosecution story is that, on 06.04.2019 at about 8/8.30 AM, while complainant Dilbag Singh son of Surat Singh, resident of Village Sisai Bolan, Hisar, aged about 50 years, was about to leave his home for his job place and his wife Shakuntla was doing household work, then Balraj and Ranbir sons of Ram Parsad, Vinod

son of Ranbir, Anil son of Balraj along with 4-5 other unknown persons, having gandasas trespassed in house of the complainant and attacked him with gandasas; when Shakuntla tried to intervene, she was given beatings with fists and kicks; after receiving injuries, the petitioner became unconscious, whereas, the assailants ran away from the spot along with their respective weapons; on matter being reported to the police, formal FIR was recorded.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions at Hisar, by moving an application for grant of pre-arrest bail. However, his such application which was assigned to Addl. Sessions Judge, Hisar, was dismissed, vide order dated 11.10.2019. As such, the petitioner has approached this Court, craving for grant of similar relief, which request is being opposed by the State counsel and counsel for the complainant.

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

The allegations against the petitioner are very grave and serious that he along with his co-accused, while armed with dangerous weapons like gandasas, having a common object, formed an unlawful assembly and committed rioting; they trespassed in the house of complainant and his wife Shakuntla and caused injuries to them. Such type of act and conduct cannot be taken lightly, rather, it is required to be dealt with firmly, so that potential criminals are deterred from taking

law into their hands and indulge in unlawful activities. Though, in the FIR, specific injuries have not been attributed to the assailants but merely for said reason, the gravity of the criminal acts of assailants does not get diminished. When a person in his house is attacked by several assailants carrying dangerous sharp edged weapons, one goes in the state of shock and trauma and it is difficult to count the number of blows being given and sequence thereof. The complainant has although not specifically named the petitioner as one of the assailants but his name cropped up during investigation. It does not matter that he has not given the precise details of the blows given to him by each of the assailant, the sequence in which was it was so given and on which part of the body.

Learned counsel for the complainant has referred to photographs, which have been placed on record by him showing that the complainant/injured had suffered multiple injuries and was bleeding profusely; one of the injuries is stated to be grievous in nature. It is indicative of a merciless assault at hands of assailants, petitioner being one of them.

Although, learned counsel for the petitioner argued that on the day of incident, the complainant side had caused number of injuries to Anil Kumar-brother of the petitioner and in self defence, the complainant received some injuries; Anil Kumar was medico-legally examined on 06.04.2019 at 12.30 PM; the police had also arrived at the

spot but no action was taken. It being so, it is doubtful as to whether the complainant side had caused any injury to Anil Kumar, rather, it is specific case of the complainant that petitioner along with his co-accused including Anil Kumar had trespassed in his house and caused injuries to him and his wife Shakuntla. Anil Kumar is said to have been granted pre-arrest bail by a Co-ordinate Bench of this Court, vide order dated 19.09.2019 and the petitioner is claiming parity along with him. However, the case of the petitioner is somewhat different. He had filed a petition for grant of pre-arrest bail before the Court of Sessions at Hisar, where he was granted interim bail, vide order dated 13.09.2019, however, the petitioner had withdrawn the said petition. He had approached that Court again seeking anticipatory bail but that petition was dismissed, vide order dated 11.10.2019. When the petitioner had been granted interim bail by Addl. Sessions Judge, Hisar on his filing first petition for anticipatory bail, gandasi had been recovered from him, that points out towards his involvement in the incident. His having withdrawn the first petition, the second petition was rightly dismissed by Addl. Sessions Judge, Hisar. Anil Kumar was granted pre-arrest bail, since the State counsel on instructions from SI Kuldeep Singh had stated that petitioner Anil had joined the investigation and his custodial interrogation was not required. Whereas, in the present case, the State counsel, on instructions from SI Surjit Singh has stated that though the petitioner has joined the investigation in terms of the

direction issued to him by the Court while granting interim bail to him but he has not come up with the complete factual position within his knowledge and his custodial interrogation is necessary for complete and effective investigation so as to find out as to how the incident was planned and executed, the part played by each one of the assailants, the source from where the weapons were procured and where they were disposed of/concealed after the incident, the motive for doing the same etc.

I find merit in such contention of learned State counsel, holding that custodial interrogation of the petitioner in this case is essential for complete and effective investigation and in case, it is denied to the investigating agency that shall leave many loopholes, lacuna and gaps in the investigation, adversely affecting the case of prosecution, which is uncalled for.

Furthermore, custodial interrogation is admittedly more elicitation orientated as has been held in case of **State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268**, wherein Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Thus, considering the gravity and seriousness of allegations, the requirement of custodial interrogation of the petitioner

for complete and effective investigation, he cannot be granted concession of pre-arrest bail, which is to be granted in exceptional circumstances to save the innocent persons from harassment and inconvenience and not to provide protective umbrella to the criminals enabling them to avoid arrest and interrogation by the investigating agency.

Thus, no case for grant of pre-arrest bail to the petitioner is made out. The petition is found to be without any merit and is dismissed accordingly.

03.08.2021

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(H.S. MADAAN)
JUDGE

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