

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

CRM-M-54362 of 2019

DATE OF DECISION :- July 08, 2021

Davinder Kumar @ Sunny and another

...Petitioners

Versus

State of Punjab

...Respondent

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

Present:- Mr. Dinesh Mahajan, Advocate for the petitioner.

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

Mr. Munish Puri, Advocate for the complainant.

The case has been taken up through Video Conferencing.

Petitioner Davinder Kumar @ Sunny, aged about 29 years and his brother Dheeraj @ Golu, aged about 27 years, both sons of Surinder Kumar, residents of Village Itti, Sujanpur, Tehsil and District Pathankot have brought the present petition under Section 438 Cr.P.C for grant of pre-arrest bail in case F.I.R No. 137 dated 23.11.2019 under Sections 323, 324, 295 and 34 IPC registered with Police Station Sujanpur, District Pathankot.

Briefly stated the facts of the case as per prosecution version are that on 19.11.2019 at about 9.00 A.M, petitioners accused having spade and dattar went near land of complainant Lakhbir Singh son of Ajit Singh, resident of village Itti, Sujanpur, District Pathankot. Surinder Kumar accused started demolishing the divider between the lands of two parties.

When complainant asked him not to do so, then Surinder Kumar gave a

spade blow to him hitting him on his left arm. Complainant fell on ground. When Sunny gave dattar blow hitting the complainant on back side, Veer Singh brother of the complainant came forward to intervene, then Dheeraj @ Golu caught hold of Veer Singh from his beard and pulled the hair and gave beatings to Veer Singh. On alarm being raised by the complainant and his brother, the accused assailants ran away from the spot along with their respective weapons.

On matter being reported to the police, formal F.I.R was registered. Apprehending their arrest in this case, the petitioners had approached the Court of Sessions at Pathankot craving for grant of pre-arrest bail. Their such application, which was assigned to Additional Sessions Judge, Pathankot was, however, declined vide order dated 2.12.2019. Feeling aggrieved, they have knocked at the door of this Court seeking the similar relief of anticipatory bail, which request is being opposed by the learned State counsel as well learned counsel for the complainant.

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 petitioners has contended that there is a counter version of the incident, inasmuch as petitioner no. 2 Dheeraj @ Golu was inflicted injuries by the complainant side; he was medico legally examined which revealed presence of inasmuch as three injuries. He has pointed out towards MLR (Annexure P2). He has further contended that the injuries attributed to the petitioners are simple in nature and in terms of the order dated 19.12.2019 they have joined the investigation and the weapons

said to have been used in the incident have been recovered. As far as offence under Section 295 IPC is concerned, learned counsel for the petitioners has contended that even as per prosecution version beard of Veer Singh was pulled during the course of incident and there is nothing to show that it was so done with an intention to hurt the religious feelings of Veer Singh. Learned State counsel on instructions from SI Surinder Kumar has conceded the factum of petitioners have joined the investigation and recovery of the weapons used in the incident have been got effected. He has stated that since on completion of investigation the challan has been filed against the accused in the Court, as such their custodial interrogation is not required. Although learned counsel for the complainant has opposed the grant of pre-arrest bail to the petitioners vehemently but keeping in view the facts and circumstances of the case, the contentions raised by learned counsel for the petitioners and statement made by learned State counsel and further finding that it is debatable as to whether offence under Section 295 IPC is made out under circumstances of the case, noting that custodial interrogation of the petitioners is not required and there is counter version of the incident, I find it a fit case to grant benefit of pre-arrest bail to the petitioners. Therefore, the petition is accepted and the interim bail granted to petitioners vide order dated 19.12.2019 is made absolute, subject to the following conditions :-

- (i) they shall join the investigation as and when so directed.
- (ii) they shall appear in the Court on each and every date of hearing.
- (iii) they shall not give any threat or intimidation to the prosecution witnesses.
- (iv) they shall not leave India without prior permission of the Court.

- (v) they shall surrender their Passports before the Investigating Officer and if they are not having Passports then shall file the affidavits 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.

The petition stands allowed accordingly.

(H.S. MADAAN)
JUDGE

July 08, 2021
p.singh

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