

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

CRM-M-3680-2022 (O&M)

Date of decision : 11.02.2022

Pritpal Singh

.....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. J.S. Thind, Advocate for the petitioner.

Mr. Saurav Khurana, DAG Punjab.

Mr. Kushagra Mahajan, Advocate for the complainant.

ALKA SARIN, J.

Heard in virtual mode.

The present petition under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioner in FIR No.224 dated 18.09.2021 under Sections 323/324/326/506/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Sadar Amritsar, District Amritsar (Annexure P-1).

Learned counsel for the petitioner would contend that the petitioner has falsely been implicated in the present case and that there is a delay of 3 days in lodging the FIR. It was contended that there was no serious injury suffered by the complainant. It is further the contention of learned counsel for the petitioner that a Medical Board was constituted for re-examining the injuries of the injured/complainant and the Medical Board had opined that there were no serious symptoms of head injury. Reliance has been placed on this opinion dated 23.12.2021 (Annexure P-3) wherein it is

stated *inter-alia* as under:

“After going through the MLR, CT scan films one in no brought by the IO, CT scan report mentioning the fracture of left parietal bone with underlying normal brain parenchyma. No weapon has been recovered by the investigating agency as conveyed by the IO and alleged weapon of offence as per the police papers including the FIR and statements is Gandasi which is heavy sharp cutting weapon. Moreover, after going through the hospital record of the patient, there is no serious symptoms of the head injury reported at the time of admission. As per the hospital record page 1 to 24 add No.12539, Civil Hospital Amritsar brought by the IO, the patient was calm conscious and well oriented to time place and person. The GCS of the person was 15/15 with no H/o vomiting, No H/o of ENT bleed, and No H/O vertigo. The fracture on the CT scan film does not appear to have been caused in concurrence with the overlying injury No.1. The dimensions of ht injury and the fracture on CT scan film are not consistent as per the board’s opinion. Medically, for injury No.1, the fracture as reported by the radiologist in its report and CT scan film does not appear to have been caused as a result of scuffle. For the injuries No.2 to 5, the possibility of friendly hand cannot be ruled out. IO is directed to take circumstantial evidences into

consideration. The original medico legal report and opinion of board of doctors is being handed over to the investigating officer.”

Vide order dated 01.02.2022 the State counsel was directed to place on record the earlier report of the Medical Board. As per the earlier report of the Medical Board, five injuries were received by the complainant and the Board *inter-alia* opined as under:

“After going through the gross findings of the MLR, CT scan report mentioning the fracture of left parietal bone with underlying normal brain parenchyma and CT scan film one in number showing the same findings as per the report in correspondence to the overlying injury No.1. The Board is of the opinion that since injury No.1 and corresponding underlying fracture is on the vital part of the body so the query being asked by the Incharge PP Fatehgarh Churian Road ASR in relation to the manner of infliction of injury No.1 as a result of friendly hand is remote and the Board agrees with the opinion furnished by the Medical Officer, Civil Hospital, Amritsar that injury No.1 is grievance in nature. However, IO is hereby directed to take circumstantial evidence into consideration.”

Heard.

In the present case, the allegations against the petitioner are that on 15.09.2021, Gurpreet Singh @ Gopi and his mother, who are residing

adjoining to the property of the complainant, in connivance with each other, plastered the wall from the side of the complainant without their consent and when they raised an objection the said Gurpreet Singh @ Gopi and his mother called Sharanjit Kaur and Pritpal Singh. Then Pritpal Singh brought other relatives of his village i.e. Harjit Singh, Harjeet Singh @ Laddi and Jaskirat Singh to the spot and they forcibly came to the roof of their house at about 9.30/10 a.m. The complainant, his wife and his mother also came to the roof. Pritpal Singh, the present petitioner, was carrying a *gandasi* in his hand, Harjit Singh @ Laddi was with a wooden handle, Harjit Singh was with an iron rod. Sharanjit Kaur and the mother of Gurpreet Singh raised a Lalkara that not to loose the opportunity today. Thereafter, Sharanjit Kaur gave slaps and threw the turban of the complainant to the ground. Pritpal Singh, the present petitioner, gave a *gandasi* blow on the complainant's head with an intention to kill which hit him on the back side of the head near the ear. Harjit Singh @ Laddi gave a blow with the wooden handle which hit the left arm of the complainant. Then Harjit Singh attacked the complainant with the iron rod. Gurpreet Singh @ Gopi threw the complainant on the ground.

As per the MLR, five injuries were received by the complainant. Originally the Medical Board vide opinion dated 01.10.2021 opined that injury No.1 and corresponding underlying fracture was on the vital part of the body and that the query being asked by the Incharge PP Fatehgarh Churian Road ASR in relation to the manner of infliction of injury No.1 as a result of friendly hand was remote and that the Board agreed with the opinion furnished by the Medical Officer, Civil Hospital, Amritsar that injury No.1 was grievous in nature. However, subsequently, on 23.12.2021,

on an application moved by the petitioner, another Board of Doctors was constituted to re-examine the injuries received by the complainant. Reliance has been placed upon the said opinion appended as Annexure P-3 with the petition by learned counsel for the petitioner. Primarily the emphasis of the learned counsel for the petitioner is on that part of the opinion of the Board of Doctors that fracture on the CT scan film does not appear to have been caused in concurrence with the overlying injury No.1. The dimensions of the injury and the fracture on CT scan film are also not consistent as per the Board's opinion and further that injury No.1, the fracture as reported by the radiologist in its report and CT scan film, did not appear to have been caused as a result of scuffle. The said opinion, which has been obtained on the basis of a request made by the petitioner, is at variance with the medical opinion given earlier by the Medical Board. Strangely, the complainant/injured does not appear to have been examined by the second Board of Doctors before giving the said opinion on 23.12.2021.

The two medical opinions are at variance and the second opinion has been given on an application filed by the petitioner. The second board, without even physically examining the injured i.e. the complainant, has opined that “.....*The fracture on the CT scan film does not appear to have been caused in concurrence with the overlying injury No.1. The dimensions of ht injury and the fracture on CT scan film are not consistent as per the board's opinion. Medically, for injury No.1, the fracture as reported by the radiologist in its report and CT scan film does not appear to have been caused as a result of scuffle. For the injuries No.2 to 5, the possibility of friendly hand cannot be ruled out. IO is directed to take circumstantial evidences into consideration*”. Learned counsel for the

petitioner has been unable to satisfy this Court as to how the Medical Board could re-assess the earlier report of without even examining the injured i.e. the complainant. Such re-assessments of medical opinions at the behest of an accused without there being any request in that behalf by the Police or supported by an order by the Magistrate cannot be accepted at face value. A doubt is created in the mind of the Court as to the motive and intent behind Government doctors re-appreciating the opinion recorded earlier and that too at the behest of a private individual without again physically examining the injured and without taking recourse to the machinery of the Police or the Judiciary. The evidentiary value of the re-assessed opinion of the Board of Doctors (Annexure P-3) will be considered during the course of the trial and this Court cannot accept the re-assessed opinion at this stage while considering a petition for grant of anticipatory bail. It is trite that the power under Section 438 CrPC is of an extra-ordinary character and must be exercised sparingly in exceptional cases only. The present case does not fall in the said category keeping in mind the nature of the injury on the vital part of the body which has specifically been attributed to the petitioner.

In view the above, I do not find this to be a fit case for grant of anticipatory bail to the petitioner. Accordingly, the present petition is dismissed.

It is made clear that nothing observed herein shall be treated as an expression of opinion on the merits of the case.

(ALKA SARIN)
JUDGE

11.02.2022
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO