

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 27461 of 2022 (O&M)

Reserved on : 30.11.2022

Date of Decision: 05.12.2022

Gurbaksh Singh @ Jony

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. R.S.Sidhu, Advocate for
Mr. G.S.Nahel, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant petition, cast under Section 438 Cr.P.C., the petitioner, craves the indulgence of his becoming admitted to anticipatory bail, in respect of FIR bearing No. 11 of 30.1.2021, registered at Police Station Amargarh, District Sangrur, constituting therein offences, under Sections 302, 120-B (deleted later on), 34 of the IPC.

Facts

2. The allegations against the petitioner are that on 12.1.2021, at about 6.30 P.M, he along with one Gupreet Singh, Kamaljit Singh, Jarnail Singh, and, some unidentified persons had come outside the house of complainant Sharanjit Kaur, and, had given beatings to the husband of the complainant, namely Ranbir Singh. On raising alarm by the complainant, and, her mother-in-law, all the accused persons fled away from the spot.

The motive behind the occurrence, is that the pigeons belonging to co-accused Gurpreet Singh had gone to the house of the complainant by flying. It is further alleged that on 29.1.2021, at about 6.30 P.M., Ranbir Singh (since deceased) informed the complainant that the petitioner, and, co-accused Gurpreet Singh, and, Kamaljit Singh wanted to compromise the matter, and, he had been called at their motor. Thereafter, deceased Ranbir Singh had gone on his motor cycle mark Hero Splendor bearing registration No. PB-13-AK-5606. After sometime, one Balwinder Singh had informed the complainant that petitioner Gurbaksh Singh, Gurpreet Singh, and Kamaljit Singh were beating Ranbir Singh near the passage in the filed of Chamkaur Singh. Thereafter, the complainant along with her brother Daljit Singh went to the spot, and, found that the above accused were beating Ranbir Singh. It is further alleged that co-accused Gurpreet Singh was armed with gandasi, whereas co-accused Kamaljit Singh was armed with gandasi, and, petitioner Gurbaksh Singh was armed with wooden stick at that time. On raising alarm by the complainant, and, her brother, the accused fled away from the spot. Ranbir Singh was taken to Civil Hospital, Amargarh, from where he was referred to Civil Hospital, Malerkotla, where he was declared to be brought dead.

Submissions of the learned counsel for the petitioner

3. The learned counsel for the petitioner submits, that initially during investigations, the petitioner was found innocent, and, his name had been kept at column No. 2, in the report under Section 173 of the Cr.P.C. It was after an application under Section 319 of the Cr.P.C., which was allowed by the learned Court below, vide order on 24.11.2021, to which Annexure P-4 is assigned, the petitioner was summoned as an additional

accused to face trial along with other co-accused.

Submissions of the learned State counsel

4. On the other hand, the learned State counsel submits, that during investigations, the complainant, and, the other witnesses specifically levelled allegations against the petitioner. Moreover, complainant, who stepped into the witness box as PW-1, has supported her version, as recorded in the FIR (supra). Therefore, he submits, that since the petitioner is involved in a grievous offence, thus, the indulgence of anticipatory bail be not accorded to him.

Locus standi of a person who is arrayed as an accused through an order made on application under Section 319 of the Cr.P.C., to move an application under Section 438 of the Cr.P.C., before the jurisdictionally empowered Court.

5. Though, any accused in an FIR, containing non-bailable cognizable offence(s), can validly recourse the remedy, as respectively constituted under Section 438 of the Cr.P.C., and, under Section 439 of the Cr.P.C. Moreover, though the above recourses to the accused concerned, can be availed only during the pendency of the investigations into the FIR.

6. However, in the instant case, though the investigations into the petition FIR became concluded, and, thereafter the trial became entered into against the appearing accused, one amongst whom was not the present bail petitioner, who, however, through a binding, and, conclusive order, being made on 24.11.201, upon an application filed under Section 319 Cr.P.C., became rather arrayed as an accused along with other accused. Nonetheless, in the face of a verdict, rendered by Rajasthan High Court in case titled as

Manohar Lal Saini and others versus State of Rajasthan, 2015 (32)

bailable warrants, upon the accused concerned, after his being arrayed as an accused, through an affirmative order being made under Section 319 of the Cr.P.C., makes it akin or similar to an order for bail. Moreover, it has also been expostulated therein, that in case the accused, against whom an order under Section 319 Cr.P.C. is made, has been summoned through issuance of warrants of arrest, thereupon, he is at liberty to either challenge it through a petition cast under Section 482 of the Cr.P.C., or can even cast a petition under Section 438 of the Cr.P.C.

7. Therefore, it has to be determined from the relevant records, whether after an order under Section 319 of the Cr.P.C., being made against the accused, the learned trial Judge concerned, had proceeded to issue warrants of arrest against the accused, or had issued bailable warrants against him. It would be only in the face of the learned trial Judge concerned, issuing warrants of arrest against the accused, that the latter would become facilitated to draw leverage, either from the mandate cast under Section 482 of the Cr.P.C., or from the mandate cast under Section 438 of the Cr.P.C.

Bailable warrants issued against the accused after he has been arrayed as an accused through an order made 24.11.2021

8. Since, as above stated, if the appearance of the accused, after an order under Section 319 of the Cr.P.C., being made against him, is strived to be caused through issuance of bailable warrants, upon him, then such bailable warrants do tantamount to bail, hence being granted to the accused concerned. Necessarily, then there is no occasion for the accused to yet proceed to file an application for grant of anticipatory bail or to recourse the mandate of Section 482 of the Cr.P.C.

9. Since, in the instant case, the order on the application cast under Section 319 of the Cr.P.C., was made on 24.11.2021. Though, the accused was ordered to be arrayed as an accused, through an order being made on the Public Prosecutor's application, cast under Section 319 of the Cr.P.C. However, subsequently, the learned trial Judge concerned, through an order made on 27.5.2022, strived to cause appearance of the accused concerned, before him, through the issuance ofailable warrants on 8.7.2022.

Conclusion from the above

10. Therefore, since the above order for reasons (supra), does tantamount to grant bail to the petitioner, thus the institution of a petition under Section 438 of the Cr.P.C., by the petitioner, was a completely misconstituted remedy. Contrarily, the accused was to ensure, that service be caused upon him of theailable warrants, and, was to thereafter ensure qua his recording his appearance, before the learned trial Judge concerned, than his taking to file the petition under Section 438 of the Cr.P.C.

Principles of law

11. (1) Though normally during the pendency of investigations by the investigating officer concerned, qua an FIR containing therein non-ailable, and, cognizable offences, the accused named therein, can validly recourse the remedy of pre-arrest bail, as contemplated in Section 438 of the Cr.P.C.
- (2) However, in respect of an accused, who became arrayed as accused, to face trial along with the initially appearing accused, rather through an order made under

Section 319 of the Cr.P.C., and, whose appearance subsequently is strived to become caused through issuance of warrants of arrest. Therefore, in the above event, the accused concerned, may recourse the remedy, either constituted under Section 482 of the Cr.P.C., or can may recourse the remedy, constituted under Section 438 of the Cr.P.C.

- (3) However, in case in respect of an accused, who has been arrayed as such, through an affirmative order, being made on the Public Prosecutor's application, cast under Section 319 of the Cr.P.C., whereafter, the learned trial Judge concerned, strives to cause his appearance through the issuance ofailable warrants. Thus, the saidailable warrants comprise an order for bail, and, enjoins the accused to ensure their execution(s), upon him, and, thereafter is to cause his appearance before the learned trial Judge concerned. As but a natural corollary, the remedy then open to him, is not the remedy constituted under Section 438 of the Cr.P.C., or the remedy constituted under Section 482 of the Cr.P.C. Reiteratedly, the said remedy, if availed, is a misconstituted remedy, given the liberty of the accused being not threatened or interfered with. Contrarily, he is required to, after ensuring the causing of service upon him, of theailable warrants, to execute the requisite personal, and, surety bonds, before the executing officer,

and, thereafter cause his appearance before the learned trial Judge concerned.

Final order

12. Consequently, the bailable warrants, as issued by the learned trial Judge concerned, on 27.5.2022, if not issued, be forthwith issued, and, service thereafter be forthwith caused upon the petitioner. However, if the bailable warrants are issued to the executing officer, the latter is directed to forthwith cause execution thereof, upon the petitioner. Subsequently, the petitioner concerned, is directed to mete compliance with the conditions set forth in the bailable warrants, besides is further directed to cause his personal appearance before the learned trial Judge concerned.

13. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

December 05, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes