

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36289-2021

Date of Decision: 21.01.2022

Nand Lal Garg and others

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Deepinder Brar, Advocate, for the petitioner(s).

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. R.K.S. Brar, Advocate, for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(Oral)

The present petition been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioners in FIR No. 82 dated 24.07.2021, under Sections 458, 323, 148, 149, 427, 506 of IPC, registered at Police Station City, Rampura, District Bathinda.

As per the contents of the FIR which was lodged on the basis of complaint made by Jatinder Bansal by alleging that they have a dispute with Nand Lal, Sanjay Kumar, Mannu, Bal Krishan and Jeewan Garg regarding the stair-case. On 23.07.2021 he alongwith other family members were present in the house and time was about 8.50 P.M. and main gate of their house was open and when Nandi, Sanjay Kumar, Mannu, Bal Krishan and Jeewan Garg, residents of Mandi Rampura were holding Sotis and Gandasas

in their hands and were accompanied by about 15-16 unknown persons entered into their house and lights in the house were on. Nandi (Petitioner No.1) raised lalkara and said that they will teach lesson for claiming their right regarding the land of stairs and upon this, these persons started giving pushes to him and many other family members and administered threats and caused damage to the manayari shop and also caused damage to the space regarding which there is an issue. Thereafter, people started gathering there and thereafter, these accused persons ran away from the spot by extending threats. It has been further stated in the FIR that the grouse was that the stairs in their area, the accused persons were claiming right upon them and they wanted to pressurize them.

The learned counsel for the petitioners has submitted that in pursuance of the orders passed by this Court on 03.09.2021 all the five petitioners were granted interim bail by this Court and in pursuance of the aforesaid orders, all the petitioners have joined investigation and they have cooperated with the investigation process. He further submitted that it is a case of no injury caused to anybody and no recovery is to be effected from anybody. He further submitted that the dispute was regarding the staircase where the complainants were seeking their claim and the fight took place on the staircase and in fact after the lodging of the FIR, the wife of petitioner No.1 filed a civil suit before the Court of learned Additional Civil Judge (Senior Division), Phul alongwith an application under Order 39 Rule 1 and 2 CPC and vide Annexure P-3, even the learned Additional Civil Judge, Phul had observed that it is prima facie established that the plaintiff (wife of petitioner No.1) is in possession of the stairs in dispute and the defendant (complainant) had failed to bring on record any document to show their

ownership and their possession over the stairs in dispute and, therefore, an interim order was passed by the learned Additional Civil Judge restraining them from encroaching upon and changing the nature of the said stairs. He further submitted that no recovery is to be effected from the petitioners and it is a case of no injury and since the petitioners have joined the investigation, the interim order passed by this Court may be confirmed.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that in pursuance of the orders passed by this Court the petitioners have joined investigation. He has also not disputed that the present case is of no injury case and no recovery is to be effected from anybody. He further submitted that the CCTV Footage of the time of fight would show that 4-5 persons were present on the stairs and fight had taken place and 3-4 muffled persons were also present and in the investigation it was found that the other persons were only neighbours and were not a part of the fight and the dispute is between the petitioners and the complainant. He further submitted that although the petitioners have joined investigation but since it was a case of trespass, the matter was, therefore, serious in nature.

Mr. Rajkaran Singh Brar, learned counsel for the complainant has submitted that an affidavit of the complainant has been filed in the present case and while referring to the affidavit he has submitted that in fact the property belonging to the petitioners was distinct from the property belonging to the complainant and both the properties had different stair-cases. He further submitted that the petitioners had also trespassed the house of the complainant and tried to demolish a part of the same. He further submitted that the fight had taken place at the stair-case with the sole

purpose of encroaching upon the same. According to him, since the matter was serious in nature, he has opposed the grant of anticipatory bail to the petitioners. It has not been disputed by the learned counsel for the complainant that it is a case of no injury.

I have heard the learned counsel for the parties.

It is an admitted position that in pursuance of the orders passed by this Court on 03.09.2021 all the petitioners have joined investigation. It is also not disputed by the learned State counsel that it is a case of no injury and no recovery is to be effected from anybody. Vide Annexure P-3 the wife of petitioner No.1 had filed a civil suit after the lodging of the present FIR wherein interim order has been passed by the learned Additional Civil Judge, Phul by observing that a prima facie exist in favour of the plaintiff and balance of convenience also lies in her favour and the defendants were restrained from demolishing and closing the stairs. The stairs which are the subject matter of civil suit are the same where the alleged fight took place. The operative part of the order passed by the learned Additional Civil Judge, Phul is reproduced as under:-

“In view of the above discussion and after going through the documents placed on record by the plaintiff, it is prima facie established that the plaintiff is in possession of the stairs in dispute and the defendants have failed to bring on record any document to show their ownership or their possession over the stair in dispute. So, a prima facie case exist in favour of the plaintiff and balance of convenience also lies in her favour and if stay is not granted in favour of the plaintiff then she will suffer an irreparable loss and injury. Hence, the present application is hereby allowed and the defendants are restrained from demolishing and closing the stairs shown as Mark P, P1, P2, P3 in the site plan illegally and forcibly. The

defendants are further restrained from encroaching upon and changing the nature of the said stairs.

Needless to say that any observations made hereby above would have no effect on the final outcome of the present case. Therefore, the application is hereby disposed off with the above observations.”

For the purpose of grant of considering the grant of anticipatory bail, the Court has to strike a balance between the freedom of an individual on the one hand and the seriousness, gravity and magnitude of the offence coupled with the antecedents of the accused etc. on the other hand.

On a specific query put to the learned counsel for the parties as to whether the petitioners are involved in any other case or not, it was submitted by the both learned counsel for the petitioners as well as learned Deputy Advocate General, Punjab that the petitioners are not involved in any other FIR and they have clean antecedents. So far as the other aspect pertaining to the seriousness, gravity and magnitude of the case is concerned, it is a case where as per the learned counsel for the parties there was no injury caused to anybody and no recovery is to be effected. Furthermore, as per the learned State counsel the petitioners have joined investigation on instructions from ASI Jagtar Singh and, therefore, the argument raised by the learned counsel for the complainant opposing the grant of anticipatory bail would not be sustainable. Apart from the same, it is not the case of the State that in case the petitioners are granted anticipatory bail, then they may temper with an evidence or may influence any witness or may flee from justice.

Therefore, considering the totality and circumstances of the present case, I deem it fit and proper to allow the present petition.

Consequently, the present petition is allowed and order dated 03.09.2021 is hereby made absolute.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

21.01.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No