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

CRM-M-32927-2022

Date of decision: 29.07.2022

SAMUAL MASIH @ TOOFAN

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Manoj R. Sharma, Advocate
for the petitioner.

Mr. M.S. Nagra, Asst. A.G. Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.127 of 10.11.2021, registered at Police Station Ghuman, Police District Batala, District Gurdaspur, wherein offences constituted, under Sections 326, 323, 148, 149 of IPC, are embodied.
2. The petition FIR carries an incident, which occurred on 22.12.2020, therefore, apparently the crime incident has been reported to the police, on almost a delay of 11 months occurring, since its happening, at the crime site.
3. In respect of assault offences, the prompt reporting of the relevant crime incident, to the police is imperative, as it would ensure that the crime incident, as carried in the FIR, is free from any stain of premeditation, and, concoction, which otherwise would become ingrained therein, upon the belated lodging of an FIR, in respect of the crime incident, and, also would make it *prima-facie* bereft of any aura of truth.

4. As above stated since there is an immense inordinate delay, since the happening of the crime incident, at the crime site, and, an FIR being lodged in respect thereof, and, with no explanation with respect to the delay hence emanating on the part of the informant-complainant, thereupon prima-facie the inculcation drawn against the present bail petitioner, is construed to be a result of premeditation, and, also loses its veracity.

5. Moreover, the offence constituted in the FIR are those under Sections 326, 323 of IPC, and, only when the victim-complainant, of the assault, in quick promptitude to penal offences happening at the crime site, had ensured the examination of his injuries, by the Medical Practitioner concerned, thereupon the assault injuries could be relatable to the petition FIR.

6. Though, the learned State counsel submits, that on the date subsequent to the occurrence inasmuch as, on 23.12.2020, the MLR qua the victim became drawn and, though it reveals therein, hence the injuries, as occurred on the person of the victim-complainant, and, also though there is an attribution by the victim, qua theirs becoming encumbered, upon his body, in sequel to an assault being made, upon his person, by the accused concerned.

7. However, the victim-complainant subsequent thereto, has been stated, by the learned State counsel, to not ask, for the registration of the FIR against the assailants, as some compromise is likely to occur, with the accused in respect of the petition crime.

8. Even though on the anvil of the above, the relevant delay may become well explicated, but it appears that yet the stain of delay continues to envelop the petition offences. The reason being that, if the victim-complainant intended to prosecute the accused concerned, he would have made a prompt reporting of the incident, to the police, but contrarily he did not do so, but on the

basis of a purported compromise, being likely to be drawn by him, with the accused, the delayed reporting of the crime incident, to the police, rather has occurred. However, the extent of delay is immense, therefore, it appears that only when there was a failure of compromise, thereupon the victim became led to institute the petition FIR against the accused, and, that too after almost 11 months elapsing since the relevant occurrence taking place, at the crime site.

9. In consequence, *prima-facie*, at this stage the attribution of guilt, to the present bail petitioner cannot be assigned any sanctity. Moreover, also when the prosecution, at this stage, has not adduced any evidence, suggestive that in the event of the bail petitioner being admitted to anticipatory bail, there is every likelihood of his fleeing from justice or tampering with prosecution evidence or influencing the prosecution witnesses. Therefore, this Court deems it fit, and, appropriate to admit the present bail petitioner to pre-arrest bail, but subject to his, within a week, ensuring his effectuating the recovery of the incriminatory weapon of offence, to the investigating officer concerned.

10. In aftermath, with the above conditions precedent, the present petition is allowed, and, in the event of the arrest of the bail petitioner, the investigating officer may not arrest the bail petitioner, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the arresting officer, and, also subject to his rendering co-operation to him, in the investigations to be carried into the offences mentioned in the present FIR. Moreover, also with an undertaking, that he shall not tamper with prosecution evidence, and, nor shall influence the prosecution witnesses.

(SURESHWAR THAKUR)
JUDGE

29.07.2022

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Whether speaking/reasoned:- Yes/No

Whether reportable: Yes/No