

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

**CRM-M No.39012 of 2022
Date of Decision: 19.10.2022**

Boota Singh

.....Petitioner.

Versus

State of Punjab

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab
for the respondent-State.

Mr. Angrej Singh Dhindsa, Advocate
for the complainant.

MEENAKSHI I. MEHTA, J.

The petitioner herein has sought the relief of anticipatory/pre-arrest bail in the criminal case arisen out of the FIR bearing No.23 dated 23.02.2022 registered at Police Station Dayalpura, District Bathinda, under Sections 324, 323, 34 IPC wherein the offence under Section 326 IPC is stated to have been added later-on.

2. Bereft of unnecessary details, the allegations, as levelled by the informant-injured named Bhupinder Singh in the subject FIR, are that he and his cousin brother Gurinder Singh had been living together in the house as constructed in their fields. On 22.02.2022, the petitioner, along-

with his co-accused, came there and they caused injuries to him and also to Sukhvir Singh son of Kulwinder Singh, with 'Kirch' as well as by batting bricks and pelting stones at them.

3. Status-report on behalf of the respondent-State (by way of the affidavit of Deputy Superintendent of Police, Sub-Division Phul, Bathinda) has already been filed.

4. I have heard learned Senior counsel for the petitioner as well as learned State counsel (assisted by learned counsel for the informant-complainant) in this petition and have also perused the file carefully.

5. Learned Senior counsel for the petitioner has contended that as per the allegations levelled by the informant in the FIR, the petitioner had pelted stone towards injured Sukhvir Singh, resulting into an injury on the right side of his face but the 'stone' cannot be construed to be a sharp-edged or dangerous weapon, so as to invoke the offence under Section 326 IPC and moreover, the above-said offence has been added in this case in view of the opinion Annexure P-8 as given on 20.07.2022, i.e almost 05 (five) months after the alleged occurrence and that too, by the doctor from some private hospital and thus, it is quite explicit that the said offence has wrongly been introduced in the instant case and in these circumstances, the petitioner deserves the relief as prayed for in this petition. He has placed reliance upon **Shaji Verus State of Kerala and another 2017(13) SCC 670;** **Mathai Versus State of Kerala 2005(3) SCC 260** and **Sushila Aggarwal and others Versus State (NCT of Delhi) and another 2020(5) SCC 1**, in support of his contentions.

6. Per contra, learned State counsel has pointed out that GD No. 008 dated 26.02.2022 (Annexure P-5) had been entered on the basis of the statement made by injured Sukhvir Singh before the police wherein he has alleged that the petitioner had given a '*Kirch*' blow on his face and he has argued that the said injury has been declared to be grievous in nature and thus, the offence under Section 326 IPC has rightly been added in the case and keeping in view the nature of the offence committed by the petitioner, the present petition be dismissed.

7. Though the afore-named informant has alleged in the FIR that the petitioner had pelted stone towards injured Sukhvir Singh but a perusal of Annexure P-5 reveals that in his above-referred statement, the said injured has categorically alleged that the petitioner had given a '*Kirch*' blow on his right cheek, below the eye and Annexure P-6 is his Medico-Legal Report wherein the weapon used for causing the said injury, has been reported to be a 'sharp' one and the CT-Scan of the face has been advised. Then, Annexure P-8 is the application moved by the police to the Medical Officer of the concerned hospital for seeking the opinion regarding the nature of the afore-described injury and the doctor has specifically opined thereon that as per the record and the CT-Scan report, this injury was grievous in nature.

8. The veracity and truthfulness of the above-discussed versions of the informant and injured Sukhvir Singh qua the weapon allegedly used for causing the injury under reference as well as of the afore-said medical opinion regarding the nature thereof, can and shall be looked into and

adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence that would be led on the record during the course of the trial and the same cannot be ascertained at the stage of deciding the instant bail petition.

9. The observations, as made by the Apex Court in **Shaji (supra)** and **Mathai (supra)** are of no avail to the petitioner because in **Shaji (supra)**, the conviction under Section 326 IPC had been altered to the one under Section 325 IPC, after appreciating the peculiar facts of the case as well as the evidence available on the record and in **Mathai (supra)**, it has been observed that what would constitute a dangerous weapon, would depend upon the facts of each case and no generalisation could be made and moreover, the observations were made while deciding the appeal preferred by the appellant therein against his conviction whereas in the present case, the investigation is still continuing and thus, the trial has yet to commence. Similarly, the observations made by Hon'ble Supreme Court in **Sushila Aggarwal and another (supra)**, are also of no help to the petitioner because the same were made while primarily dealing with question of the duration of the anticipatory bail.

10. Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of anticipatory/pre-arrest bail. Resultantly, the petition in hand stands dismissed accordingly.

11. However, it is clarified that nothing contained here-in-before

shall be construed to be an expression of the opinion of this Court on the merits of the case.

October 19, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>