

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

207

CRM-M-42245-2022

Date of decision : 29.09.2022

Sanjeev Kumar

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Ms. Usha Rani, Advocate
for the petitioner.

Mr. Himmat Singh, D.A.G., Haryana.
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.537 dated 22.08.2022 registered under Sections 323, 324, 34, 341 and 506 of the Indian Penal Code, 1860 at Police Station Thanesar Sadar, District Kurukshetra.

The above-said FIR was registered on the complaint made by complainant Lakhmi Chand alleging that on 21.08.2022 at about 10:00 p.m. when he was going on his motorcycle to his home after closing his shop, on the way, he was obstructed by the petitioner and co-accused Sahil who gave beatings to him with dandas/bindas. As a result of the same, the complainant sustained head injury and also a fracture.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The quarrel was between the complainant and co-accused Sahil. Co-accused Sahil

has already been granted bail by learned Addl. Chief Judicial Magistrate, Kurukshetra vide order dated 26.08.2022. Nothing is to be recovery from the petitioner and his custodial interrogation is not required. The petitioner is already ready and willing to join the investigation.

On the other hand, learned State counsel opposes the present petition in terms of status report filed by way of an affidavit dated 28.09.2022 of Sh.Ram Dutt, HPS, DSP in the Court today which is taken on record. He submits that the petitioner along with his co-accused attacked on the complainant with dandas/sticks and caused injuries to the complainant. The injury on the head of complainant is attributed to the petitioner. The petitioner is also involved in 02 more similar nature of criminal cases .For proper/thorough investigation of the case and for the recovery of alleged weapon, the custodial interrogation of the petitioner is required.

I have heard learned counsel for the parties and perused the record.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma : (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and

insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

Keeping in view the above facts as well as nature of the offence, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

29.09.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No