

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

CRM-M-42632-2022

Date of Decision: 19.9.2022

Pursharth

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Ashok Kumar Khunger, Advocate for the petitioner

Mr.GS Sandhu, DAG, Punjab

Mr.K.B.Raheja, Advocate for complainant

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Mr. K.B. Raheja, Advocate appears on behalf of the complainant and files Vakalatnama. Office to tag the same at the appropriate place. He also files photocopy of the MLR which is taken on record.

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.0250 dated 1.9.2022 under Sections 353, 506, 186, 120-B, 332 of the IPC registered at Police Station City-1 Abohar, District Fazilka.

Learned counsel for the petitioner contends that the only role attributed to the petitioner is that he gave two blows with his baseball bat on the ankle of the right leg and knee of the complainant. All the injuries are simple in nature. Nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State submits that the petitioner alongwith other co-accused have attacked the complainant on the fateful day, while he was performing the duty

being Chief Sanitary Inspector at Municipal Corporation Abohar. He had gone for checking MRF Centre near Post Office Abohar that whether the work is being conducted properly. After checking the work, when he was about to go to his office, then two youths who were carrying baseball bat in their hands, while raising lalkaras came towards the complainant and started saying he should be taught a lesson for committing much more interference in the work of the Municipal Corporation. One youth with his baseball bat gave blow on his right eye and said to his other companion that Pursharth (petitioner) should break his both legs, then Pursharth (petitioner) gave two consecutive blows with his baseball bat on the ankle of his right leg and knee. The complainant fell down, then the other unidentified boy gave blow with his baseball bat on his right arm. The complainant received three injuries- (i) Pain and swelling at right eyelid and eye, (ii) Pain and swelling at right elbow joint, (iii) Pain and swelling at right knee joint and right lower leg- Advised X-ray and the report of X-ray is awaited. Learned counsel for the complainant reiterated the arguments put forth by the learned counsel for the State.

Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role and injury attributed to him. There are very grave and serious allegations of assaulting a public servant on duty, besides giving threats of breaking his both legs. Assault on a public servant is a serious offence and cannot be taken in a light and casual manner.

Otherwise, public servants would not be able to perform their duties in a proper and fearless atmosphere. Such act and conduct is required to be viewed with all seriousness. The petitioner's custodial interrogation is necessary for complete and effective investigation. In case the same is denied to the investigating agency, it would leave many gaps and loopholes, adversely affecting the investigation, which is uncalled for.

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 ensconced 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.

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

19.9.2022
MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No