

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

201/2

**CRM-M-41395 of 2021 (O&M)
Date of Decision:08.02.2022**

Hanuman Singh Tanwar

..... Petitioner

Versus

State of Haryana

..... Respondent

CRM-M-53378 of 2021

Tej Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manoj Tanwar, Advocate,
for the petitioners.

Mr. Anmol Malik, DAG, Haryana

Mr. Rohit Mittal, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

Vide these petitions, the petitioners seek the concession of 'anticipatory bail' under the provisions of Section 438 of the Cr.P.C., upon FIR no.325, dated 11.09.2021, having been registered at Police Station Nangal Chaudhari, District Mohindergarh, alleging therein the commission of offences punishable under Sections 323, 325, 34 and 506 of the IPC.

CRM-42682 of 2021

Vide this application, the petitioner in the accompanying petition seeks to place on record orders passed by the Supreme Court in two Special Leave Petitions filed by his co-accused, Yogesh Singh and Jitender Singh, with the arrest of those persons having been stayed by the Apex Court, but with them directed to cooperate with the investigation.

Notice in the application.

Mr. Anmol Malik, learned DAG, Haryana, accepts notice at the asking of the court, with Mr. Rohit Mittal, Advocate, accepting notice on behalf of respondent no.2.

The application is allowed subject to all just exceptions and the copies of the aforesaid orders of the Supreme Court are taken on record as Annexures P-6 and P-7 respectively, with the accompanying petition.

CRM-M-41395 of 2021

On 01.10.2021 the following order had been passed by this court:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.325, dated 11.09.2021, having been registered at Police Station Nangal Chaudhri, District Mohindergarh, alleging therein the commission of offences punishable under Sections 323, 325, 34 and 506 of the IPC.

Learned counsel for the petitioner at the outset points to an agreement shown to be entered into between the complainant, (Jogender), and the son of the petitioner, on 09.08.2019 (copy Annexure P-3), clause 6 of which agreement shows that in case of any dispute between the parties to the agreement, the petitioner would be

the arbitrator to settle such dispute.

He submits that the petitioner is not denying that he went to the premises of the complainant, but even if the CCTV footage is perused, the petitioner will not be seen to be actually participating in the fight and therefore he has only been roped in since the complainant, along with two others, had entered into an agreement with the petitioners' son.

He submits that in fact the complainant is also the younger brother of the petitioner.

The complainant is ordered to be impleaded as respondent no.2 in the petition, with the Registry directed to take his particulars from the copy of the FIR annexed as Annexure P-1.

Notice of motion is issued, with Mr. Neeraj Poswal, learned AAG, Haryana, accepting notice at the asking of the court, on behalf of the State.

Respondent no.2 be served by way of normal process, as also *dasti* process.

A gazetted officer is directed to file a reply to the petition, stating therein as to whether the petitioner is actually seen to be present at the place of occurrence, and is actually seen to be actively participating in the fight as an aggressor, or not.

It is made clear that the gazetted officer shall file such affidavit only after himself watching the CCTV footage and if any false shielding is found, naturally this court would take appropriate action against the person concerned.

Adjourned to 24.11.2021.

In the meanwhile, the petitioner is directed to join investigation within week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

If the affidavit of the gazetted officer is not filed before the next date of hearing, the SP, Mohindergarh, shall be summoned to court immediately.”

Thereafter, on November 24, 2021, upon an affidavit of the DSP, Narnaul, having been filed, it was argued by learned State counsel as also counsel for respondent no.2 that even as per the said affidavit, the petitioner was actually seen beating the complainant, as per the CCTV footage.

However, counsel for the petitioner had not appeared on that date and on December 02, 2021 he had informed this court that co-accused of the petitioner have been directed not to be arrested by the Supreme Court, with him therefore directed to place on record the aforesaid orders.

Today learned State counsel, on instructions from the investigating officer, i.e. SI Ram Kumar, submits that the petitioner in this petition as also the petitioner in the accompanying petition, i.e. CRM-M-53378 of 2021 (Tej Singh) having joined investigation, their custodial interrogation is not required.

Learned counsel for respondent no.2 vehemently opposes the interim order passed in favour of the petitioner being made absolute, with him submitting that even in terms of the aforesaid affidavit of the DSP, at least the petitioner (Hanuman Singh Tanwar) having been seen to be beating up the complainant, and further with counsel for the petitioner having made an incorrect statement on the date that notice of motion was issued, to the effect that he was only present there

with him not having beaten up anybody, the petition should actually be dismissed.

Having considered the matter, simply in view of the fact that the investigating officer himself has instructed learned State counsel, to submit that the custodial interrogation of the petitioners is not required, hence, even in terms of the ratio of the judgment of the Supreme Court in M.C. Abraham v. State of Maharashtra (2003) 2 SCC 649, there would be no reason for this court to continue with these petitions.

Consequently, without making any comment whatsoever on the actual merits of the cases, the petitions are allowed, with the interim orders admitting the petitioners to interim bail made absolute on the same terms and conditions.

However, firstly of course, the investigating agency would be at liberty to initiate any appropriate proceedings for cancellation of bail on any valid ground; and further, if the complainant is aggrieved in any manner of the investigation carried out, he would naturally avail of all remedies available to him in law.

A copy of this order be also placed on the file of the other connected matter too.

February 08, 2022
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No