

201(3 Cases)

(2023:PHHC:126209)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22600 of 2023

Date of Decision: 25.09.2023

Sukhdev Singh

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. B.D. Sharma, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. D.A.G., Punjab.

Mr. Gagandeep Singh Bajwa, Advocate for the complainant.

PANKAJ JAIN, J. (ORAL)

1. Apprehending his arrest in FIR No.130 dated 03.11.2022 registered for offence punishable under Sections 324, 326, 506, 148, 149 of IPC at Police Station Bhindi Saidan, District Amritsar Rural (Annexure P-1), the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

While issuing notice of motion on 05.05.2023, the following order was passed:-

“Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.130, dated 03.11.2022, under Sections 324, 326, 506, 148, 149 IPC, registered at Police Station Bhindi Saidan, District Amritsar Rural, Annexure P-1.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He has submitted that alleged occurrence took place on 05.10.2022 whereas the present FIR was lodged after about a month, i.e. on 03.11.2022. He submits that exorbitant delay itself shows that FIR has been lodged by premeditated mind by distorting the facts of the case. He submits that though the petitioner has been alleged to be armed with Dattar and having given blow on the left arm of the injured complainant, however, as per MLR, the

opinion has been given as under:-

“Injury No.1 and 2 were kept under X-ray observation. As per X-ray No. LPK 282 Oct 2022 injury No.1 declared as grievous in nature by board of doctors constituted by SMO CHC Lopoke on dated 07/Oct/2022. As underlying fracture is superficial cortical cut in the outer cortex of middle one third of ulna which appears to be doubtful hence IO is directed to correlate the injury with circumstantial evidence. Injury No.2 is declared as simple in nature by Board of doctors.”

He submits that the Board of doctors themselves have opined that injury appears to be doubtful. He has submitted that in the facts and circumstances, no prima facie case is made out for custodial interrogation, however, petitioner is ready to join the investigation and abide by all the terms and conditions of the anticipatory bail if this Court considers his request for granting the same. It is further submitted that co-accused of the petitioner has already been granted interim anticipatory bail by this Court on 17.04.2023 passed in CRM-M-18333-2023 and the same is pending for 11.07.2023.

Issue notice of motion.

On the asking of the Court, Mr.Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice on behalf of the respondent-State. Adjourned to 11.07.2023.

In the meanwhile, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C.:-

“(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so;

(ii) That the petitioner shall not directly or indirectly, make

any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) That the petitioner shall not leave India without prior permission of the Court.”

State is directed to file status report on or before the next date of hearing”.

2. Today, Mr. Tarun Aggarwal, Sr. DAG, Punjab on instructions from Lakhwinder Singh ASI submits that the petitioner has joined the investigation and is no more required for custodial interrogation. Further, counsel for the complainant Mr. Gagandeep Singh Bajwa submits that there is a specific allegation *qua* the present petitioner Sukhdev Singh gave a blow with his dasti dattar which as per MLR was declared to be grievous in nature.

3. Faced with the situation, counsel for the petitioner relies upon the contents of the MLR as per it is opined that fracture is superficial cortical cut in the outer cortex of middle one third of ulna which appear to be doubtful.

4. In view of above, it has been argued that counsel for the petitioner that it is highly debatable as to whether the offence punishable under Section 326 IPC is at all made out or not.

5. Resultantly, without commenting merits of the case, the interim order dated 05.05.2023 is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

6. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.

7. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act, 1872 in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.

8. It will be open to the police or the investigating agency to move this court for a direction under Section 439 (2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-

cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.

9. Petition stands disposed off.

10. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

11. Pending application(s), if any, shall also stand disposed of.

**(PANKAJ JAIN)
JUDGE**

25.09.2023
Deepak Patwal

Whether speaking/reasoned:

Yes/No

Whether reportable: