

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.209

Case No. : CRM-M-31390-2023

Date of Decision : July 14, 2023

Raj Kamal

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. K. B. Raheja, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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GURBIR SINGH, J. :

1. Prayer in this petition is for grant of anticipatory bail to the petitioner in case FIR No.23 dated 15.03.2023, under Sections 323, 324 IPC (Section 326 IPC added later vide DDR No.31 dated 09.04.2023), registered at Police Station Khuian Sarwar, District Fazilka.

2. The case in question was registered on the statement of one Mainpal (Menpal). As per allegations, on 23.10.2022, the complainant and his son Sahil went to irrigate their fields. His son started preparing tea and he was arranging the water course. His elder brother (petitioner) was also irrigating his field. At about 03:00 PM, he asked his brother about turn of water but his brother replied that he was not having any turn of water. Rather, he came to him along with spade and gave a blow with it, which hit his left jaw. Then he gave another blow with spade. He raised his right hand in defence, then spade hit on his little finger of right hand. The

petitioner also gave a push of spade hitting complainant on his left shoulder. Meanwhile, his son Sahil Came to the spot. He and his son raised alarm and the petitioner ran away from the spot. The complainant was got admitted in hospital. The doctor concerned, after operating his jaw, stopped him from speaking.

3. Learned counsel for the petitioner submits that parents of the petitioners are residing with him. The land, as per share of the complainant, has already been given to him but he wanted some more land. His father assured him to give some more land. Since the land is in litigation with his brother namely Sultan and there is loan on the land, it cannot be transferred to the complainant but the complainant started quarreling with the entire family in order to pressurize the petitioner and his father to give him more land. The occurrence took place on 23.10.2022, whereas FIR was registered on 15.03.2023, after such a long delay. Learned counsel further submits that even if the complainant himself was not in a position to speak, FIR could be registered well in time by recording statement of Sahil (son of the complainant), who was also present at the spot. No explanation is there as to why FIR was not registered on the statement of Sahil. Even Section 326 IPC was added afterwards. The complainant was petitioner's real brother. A compromise was also effected in the Panchayat. Although the petitioner agreed to give some more land to the complainant, but that compromise could not mature. The petitioner is ready to join investigation. Injury on the person of the complainant is on non-vital part. To support his contentions, learned counsel for the petitioner has relied upon two judgments

of this Court namely **Sukhdev Singh @ Pappu and another vs. State of**

Punjab passed in **CRM-M-45868-2016**, decided on 06.03.2017 and **Baldev Singh vs. State of Punjab** passed in **CRM-M-44999-2006**, decided on 09.10.2006. Further reliance has been placed on a judgment of Madhya Pradesh High Court in case of **Nepal Singh Jat vs. State of M.P.**, Law Finder Doc **Id # 1471801**.

4. Learned State counsel has opposed the prayer made by learned counsel for the petitioner by relying upon the contents of Status report by way of affidavit of Sukhwinder Singh Brar, PPS, Deputy Superintendent of Police, Sub Division Abohar, District Fazilka, filed today in Court on behalf of respondent-State. He has further submitted that the complainant was unable to speak. So, there is delay in lodging the FIR. On receipt of Medico Legal Report of the complainant, wherein one injury was declared grievous in nature, offence under Section 326 IPC was added in the FIR in question.

5. Heard.

6. As per version of the prosecution, son of the complainant was present at the spot. On asking, learned State counsel has submitted that he is about 15 years old. There is no explanation as to why the case was not registered on the statement of son of the complainant. The delay in lodging the FIR remains unexplained. There is no explanation as to when the complainant was discharged from the hospital. The petitioner has already joined investigation prior to adding Section 326 IPC. Learned State counsel has fairly admitted that the spade used in the crime has already been recovered from the petitioner. No recovery is now to be effected from the petitioner. The culpability of the petitioner shall be decided during trial of the case. The parties are real brothers. Since no recovery is to be effected

from the petitioner, no useful purpose would be served by denying the concession of anticipatory bail to the petitioner.

7. Accordingly, the present petition is allowed. In the eventuality of arrest of the petitioner in the instant case, he shall be enlarged on bail subject to his furnishing personal bond/surety bond to the satisfaction of Investigating Officer/Arresting Officer. The petitioner shall join the investigation as and when called upon to do so by the Investigating Agency. The petitioner shall also abide by the conditions as laid down under Section 438(2) Cr.P.C. in letter and spirit.

8. Pending applications, if any, shall stand disposed of along with this judgment.

July 14, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.