

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35185-2023

DECIDED ON: 24.07.2023

RAVINDER KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lalit Goyal, Advocate
for the petitioner.

Mr. Karan Puggal, DAG, Punjab.

Mr. Rahul Garg, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking the concession of anticipatory bail to the petitioner in light of the compromise dated 15.07.2023 in FIR No.0013 dated 12.01.2023, under Sections 308, 323, 148, 149 of IPC, 1860, registered at Police Station Gidderbaha, District Sri Muktsar Sahib (Annexure P-1).

2. No ground is made out for second anticipatory bail on the basis of compromise, in the light of the medical report as well as assertions made by learned State counsel that the petitioner has been attributed categorically injury on the head with the kirpan blow and in the medico legal report, it has been declared dangerous to life that is why Section 308 IPC has been attracted against him.

3. The broad principles for exercising the powers under Section 482 were summarized by the Hon'ble Supreme Court in the matter of 'Parbatbhai Aahir @

Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and

"(1) section 482 CrPC, 1973 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of section 320 CrPC, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons

for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

4. Furthermore, the Supreme Court in the matter of '**State of Madhya Pradesh versus Laxmi Narayan and others**', 2019 (5) SCC 688, considering such eventualities after examining catena of decisions on the issue and summarizing the propositions as under:-

"i) that the power conferred under section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst

themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society.

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

5. Now, the instant petition is to be tested within the fore-corners of the above laid down principles in State of Madhya Pradesh (supra) and for that a brief glance to the facts is must. I have perused the contents of both the aforesaid document from where it is crystal clear that the petitioner has been attributed specific role i.e., injury inflicted on the head with kirpan blow, which is declared dangerous to life, therefore the offence is not private in nature, but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

6. Considering the observations made by the Apex Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur' and Laxmi Narayan's case (supra)*** and the fact that the specific role attributed to the petitioner i.e., giving a blow with kirpan on the head, the petition being devoid of merits stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

24.07.2023

Meenu

Whether speaking/reasoned Yes/No
Whether reportable Yes/No