

CRA-S-3147-2023

2023:PHHC:145653

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

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CRA-S-3147-2023

Date of Decision : **November 16, 2023**

SHANKY AND ANOTHER

.....Appellants

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Kartik, Advocate for the appellants.

Mr. Bhupender Singh, DAG, Haryana.

Mr. Kanhiya Soni, Advocate for respondents No.2 and 3.

KULDEEP TIWARI. J.(Oral)

1. Through the instant appeal, a challenge is thrown to the order dated 19.10.2023, where through the application for grant of anticipatory bail was dismissed in case FIR No.261 dated 15.8.2023, under Sections 323, 34, 341 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (offences under Section 325 IPC and Sections 3(1)(S), 3(1)(R), 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, have been added later on), registered at Police Station Uklana, District Hisar.

2. The prosecution agency was set into motion on a complaint made by Karan Singh, wherein he alleged that on 14.08.2023, at around 01:30PM, he along with Harish son of Harmesh, resident of Saccha Khera, Vikas son of Dalbir Singh, resident of Jajanwala and Pardeep

resident of Pabra went to J.K. Hotel Uklana Mandi for lunch. The owner of the hotel namely Joginder Punjabi (applicant) was already known to them. They were eating food in the room constructed in the basement of the hotel. In the meanwhile, 5-6 persons came to the hotel to eat the food. The owner of the hotel asked them to go away as they had been sitting in the hotel for more than sufficient time and were shouting. Thereafter, they went to the counter of the hotel. Joginder demanded an amount of ₹1050/- for the food they had ordered. They refused to give the aforesaid money. Some heated arguments were exchanged between them on the bill amount. Jogender called his son Shanky (applicant) on telephone. Shanky alongwith 4-5 boys came to the hotel. On seeing them, Pardeep son of Suresh made the online payment of ₹1050/-. Thereafter, Harish and Vikas went outside the hotel. Karan alongwith Pardeep remained inside the hotel. Shanky son of Jogender caught hold of him from his collar and Jogender caught hold of his left hand and started beating Karan with slap and fist blows. Jogender and Shanky gave him castiest abuses and gave beatings and turned them out of the hotel. Accused Jogender and Shanky while standing outside the hotel kept uttering castiest remarks to them. Jogender and Shanky came and stood at a significance distance from the hotel. Thereafter Vikas telephonically informed about the incident to Sandeep son of Raja Ram resident of Hansewala. Sandeep knew both the sides. At around 06:00 PM Sandeep came to Jogender and Shanky. Thereafter, they alongwith Sandeep went to the aforesaid hotel. Sandeep assured them that he would get the matter compromised. When

Sandeep tried to make Jogender and Shanky understand, they also uttered castiest remarks to Sandeep in front of them. Sandeep advised to leave the place as they did not want to make quarrel. When Sandeep and Karan departed the hotel, then Shanky came from behind and hit with an iron pipe on the head of Sandeep. He also broke their motor-cycle with the said iron pipe. After receiving the blow of iron pipe, Sandeep fell down and became unconscious. Blood started oozing out from the head of Sandeep. In the meantime, their friend Deepak arranged a vehicle and took Sandeep to CHC Barwala for treatment.

3. Learned counsel for the appellants submits that from a bare perusal of the FIR, the ingredients of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are not made out. Initially, the FIR was registered for causing simple injuries, whereas, during investigation, after obtaining report from a private doctor, the offence punishable under Section 325 IPC was added just to aggravate the offence. He further submits that it is a case of version and cross version and, therefore, both the appellants deserve to be released on anticipatory bail.

4. Upon notice, the learned State counsel in compliance of the order dated 27.10.2023, filed reply by way of affidavit of Gaurav Sharma, HPS, Deputy Superintendent of Police, Barwala, Hisar giving details of the investigation as well as the role of the appellants.

5. I have heard the learned counsel for the parties and have perused the record very carefully.

6. It is not under dispute that the appellants had caused injuries,

which attracted penal provision of Section 325 IPC. Further, Annexure R-1 attached with the reply reveals the site and the gravity of injury. The injury suffered by the complainant is on a temporal region which is a fracture. The relevant extract of the injury reads as under:-

“Medicolegally Exm. Vide MLR No.SK/49/2023/CHC/BRW. After going through treatment record, the outcome regarding injury. There is fracture (Lt) temporo-parietal bone in CT SCAN & EDH (Lt) temporoparietal Contusions B/L temporo-parietal SAH Left ear CSF Otorrhoea Present So, due to fracture injury is declared as grievous and undangerous.”

7. A further reading of the FIR, shows that initially the appellants were refused to be given food by the owner of the hotel and thereupon, they also caused injuries to him, which includes serious injuries and one of which is attributed to one of the appellants, who is before this Court. It has been further submitted by the learned State counsel that the custodial interrogation of the appellants is very much required, so as to recover the weapon of offence.

8. In view of the above facts and observations, this Court refrains to grant extra ordinary relief of anticipatory bail, especially considering the fact that one of the injured suffered a grievous injury on his head. Accordingly, the instant appeal is, hereby, dismissed.

(KULDEEP TIWARI)
JUDGE

November 16, 2023
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No