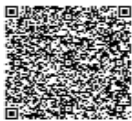


2024:PHHC:080429



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

**CRM-M-11239-2024
DECIDED ON: 04.04.2024**

GURMAIL KAUR AND ANOTHER
.....PETITIONERS
VERSUS
STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Divyadeep Walia, Advocate
 for the petitioner.

 Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioners in FIR 54, dated 17.04.2015, under Sections 353, 186, 332, 379, 120-B, 148 and 149 of the Indian Penal Code 1860, registered at Police Station Lambi, District Sri Muktsar Sahib.
2. Learned counsel for the petitioner contends that the petitioners have been falsely implicated in the present case and the police officials received injuries from the brick bats thrown by the mob. It is further contended that the petitioners were not present on the date of occurrence and they have been nominated by the police to create pressure on the villagers. It is submitted on behalf of the petitioners that the second anticipatory bail applications was wrongly dismissed after observing that there are no change circumstances.

3. Mr. Rajiv Verma, DAG, Punjab has opposed the prayer made in the present petition stating that there is sufficient evidence against the petitioners to prove their guilt. It is contended that the trial Court has already issued the non-bailable warrants of the petitioners.
4. Heard learned counsel for the parties.
5. No other argument has been raised by either of the parties.
6. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The court has extraordinary power to protect an innocent person. However, this power has to be exercised by the courts with due circumspection.
7. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct

themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

7. It is evident from the record, that the first application seeking anticipatory bail filed by the petitioners was dismissed by the trial Court vide its order dated 16.07.2015 (Annexure P-2) and since then they are absconding. They have now been summoned through non-bailable warrants. Moreover, the petitioners have inflicted injuries upon the police officials by throwing brick bats upon them and have been specifically named in this regard.

8. Keeping in view the role attributed to the petitioners, this Court is of the view that their custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion.

9. In view of the discussions made hereinabove, this Court is of the firm view that the petitioners do not deserve the concession of pre-arrest bail, as such the same is dismissed being devoid of any merits.

04.04.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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