

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

103

**CRM-M-17990-2024
DECIDED ON: 06.05.2024**

HARMANDEEP SINGH @ HARMANPREET SINGH

... PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gagandeep Jammu, Advocate
for the petitioner.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking anticipatory bail to the petitioner in case FIR No. 121, dated 10.07.2019, under Sections 323, 324, 452, 148 and 149 IPC (Section 326 IPC added later on), registered at Police Station Majitha, Amritsar.

2. The factual matrix of the present case is that Hardial Singh got recorded his statement alleging that on 04.07.2019, at about 07:30 PM, his elder brother Virsa Singh and his wife Ninder Kaur had come to his house and at that time Baldev Singh son of Sadha Singh empty handed, Harmanpreet Singh son of Baldev Singh armed with Dater, Amandeep Singh son of Baldev Singh armed with baseball bat, Balwinder Singh son of Sadha Singh armed with dang, Balraj Singh alias Nikku son of Balwinder Singh armed with Dater, Sawinder Singh son of Sadha Singh armed with Dang and Jaspal Singh alias Laddi son of Sawinder Singh armed with dater trespassed into his house and Baldev Singh raised lalkara and on his instigation, Harmanpreet Singh gave a dater blow on his person. Then Balraj Singh alias Nikku gave dater blow on his right hand.

Virsa Singh his brother came forward to rescue him, then Jaspal Singh alias Laddi gave a dater blow on the person of his brother, which hit on his left thigh. Then Amandeep Singh gave baseball bat blow on his person. In the meantime, wife of his brother came forward to rescue him. Then Balraj Singh alias Nikku gave a dater blow on the wife of his brother, which hit on the right side of her head. Then Harmanpreet Singh gave dater blow on the right hand of his brother's wife. Then they all raised alarm. In the meantime, his wife Gurmeet Kaur, who was working in the kitchen, came out and in the meantime, Harmanpreet Singh gave dater blow on his left arm. Balraj Singh alias Nikku gave dater blow on his right thigh. Balwinder Singh gave dang blow on the person of his brother's wife and all the accused persons left the spot while abusing them.

3. It has been contended on behalf of learned counsel for the petitioner that he has been falsely implicated in the present case. A bare perusal of FIR would reveal that the same has been registered in a perfunctory and cosmetic manner and as a ruse to arm twist and harass the petitioner. It is further contended that ingredients of Sections 323, 324, 452, 148, 149 and 326 IPC are not made out and nothing is to be recovered from him.

4. Notice of motion.

5. Mr. Rajiv Verma, DAG, Punjab, appearing on advance notice accepts the same on behalf of respondent-State of Punjab. He argues that though the order dated 30.11.2019 declaring the petitioner proclaimed offender in the present case was set aside/quashed by the trial Court vide order dated 20.03.2024 (Annexure P-4) but it is a settled law that the Courts would refrain from granting anticipatory bail to the applicant/petitioner under Section 438 Cr.P.C., if he has been declared a Proclaimed Offender.

6. Heard learned counsel for the respective parties.
7. 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.
8. From perusal of record, it is evident that for reasons best known to the petitioner, subsequent to registration of FIR on 10.07.2019 he did not file an application seeking anticipatory bail neither before the trial Court not before this Court. He has approached this Court only after the issuance of the proclamation under Section 82, Cr.PC. More so, in the case of similarly situated co-accused of the petitioners, the order granting anticipatory bail to them has already been made absolute. Thus, a scanning of the acts and omissions of the petitioner, it can only be seen that virtually, the petitioner was defying the authority of law and moved petition seeking quashing of order dated 30.11.2019 when he apprehended arrest owing to his non-attendance and dis-obedience.
9. 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.”

10. In the present case the allegations against the petitioner is that he inflicted injuries on the person of all the injured with datar and one injury caused by him on the person of the complainant was declared grievous in nature. Moreover, it is not in dispute that till date, he has not joined the investigation of the present case. Even after filing of challan when notices were issued to him, he did not appear before the Court and he was declared proclaimed offender by the trial Court vide its order dated 30.11.2019 (Annexure P-3).

11. As a result, in the considered view of the Court, the custodial interrogation of the petitioner is necessary to unearth all the ramifications involved in the present case. The petitioner, as a result, has not been able to make out a case for releasing him on anticipatory bail, and his petition filed accordingly dismissed.

06.05.2024
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(SANDEEP MOUDGIL)
JUDGE

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