



285 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-29917-2023
Date of decision: 24th July, 2024

Lal Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Deepak Girotra, Advocate for the petitioners.
Mr. A.S. Samra, AAG, Punjab.
Mr. Tajinderbir Singh, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioners seeking pre-arrest bail in case arising out of FIR No. 139 dated 12.12.2022 registered under Sections 323, 427, 506 and 148 read with Section 149 of IPC at Police Station Moonak, District Sangrur. The offences under Sections 452 and 308 of IPC were added later on.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant Gurwinder Singh making allegations that on 11.12.2022, he along with his family members was



present in his house when the petitioners reached there armed with sticks and after making an exhortation, petitioner No.1-Lal Singh dismantled the wall of the house of the complainant with a tractor trolley. All of them entered into his house and opened an assault upon the complainant and his family members. After causing injuries to them, they fled from the spot. The petitioners had been extended benefit of bail for commission of the offences for which they had been booked at the time of lodging of the FIR. However, during the course of the investigation, offences under Sections 308 and 452 of IPC had also been added. Apprehending their arrest, the petitioners moved application for grant of pre-arrest bail qua offence under Section 308 of IPC as well before the Court of Additional Sessions Judge, Sangrur, but the same had been dismissed and hence, this petition has been filed.

3. It is argued by learned counsel for the petitioners that they have been falsely implicated in this case. Earlier petitioners No. 2 and 3 were extended benefit of pre-arrest bail vide order dated 04.01.2023, whereas the petitioner No.1 was granted concession of regular bail vide order dated 12.01.2023. Offences under Sections 452 and 308 of IPC have been added later on. They have joined the investigation qua commission of above-mentioned offences as well. Their custodial interrogation is no more required. Therefore, it is argued that they deserve to be extended benefit of pre-arrest bail.

4. Status reports have been filed by respondent-State, as per



which, on the basis of the medical reports received during the course of investigation, a case for commission of offence punishable under Section 308 of IPC had been made out as against the petitioners and therefore, offences under Section 308 and then 452 of IPC had been added in this case. It is admitted that the petitioners had already joined investigation and their custodial interrogation is not required. However, at the same time, it is submitted by learned State counsel assisted by learned counsel for the complainant that the pre-arrest bail petition of the petitioners is not maintainable keeping in view the fact that they were already in constructive custody of law when they were extended benefit of bail earlier. To fortify this argument, they have placed reliance upon the decision of Supreme Court in '*Manish Jain v. Haryana State Pollution Control Board, 2021(1) AICLR 416*' and *CRM-M-39172-2021* titled as '*Pawan Kumar Vs. State of Haryana*' decided on 21.09.2021 by a Co-ordinate Bench of this Court.

5. I have heard learned counsel for the petitioners as well as learned State counsel at considerable length and have gone through the record carefully.

6. It is apparent from the record that the petitioners No. 2 and 3 had been extended benefit of anticipatory bail and petitioner No.1 had been extended benefit of regular bail in this case, when the offences under Section 308 and 452 of IPC had not been added. After addition of these offences, all of them moved applications before the Court of Additional Sessions Judge



for seeking benefit of anticipatory bail which had been dismissed on the ground of gravity of the allegations qua commission of offence punishable under Section 308 of IPC. It has also come on record that the petitioners have joined investigation after addition of offences punishable under Sections 308 and 452 of IPC.

7. Now, the question that arises for consideration is as to whether, the provisions of Section 438 Cr.P.C. can be invoked in the peculiar circumstances of the case? A bare perusal of the provisions of Section 438 of Cr.P.C. shows that it is only upon an apprehension of arrest, consequent upon initiation of some criminal proceedings that these provisions can be invoked. In *Manish Jain's case (Supra)*, it was observed by Hon'ble Supreme Court that when an accused is on bail, he is in a way in constructive custody of law and if the law requires him to surrender or take him back in custody, it cannot be assumed that there is apprehension of his arrest on account of accusation as he deemed to be in constructive custody already and in such circumstances, provisions of Section 438 of Cr.P.C. cannot be availed of. In *Pawan Kumar's case (supra)*, it was observed that it is only when there is an apprehension of arrest of an accused upon an accusation having been made upon institution of FIR or lodging of complaint or otherwise having been summoned by the Court for the first time to face trial, that a person may approach the Court under provisions of Section 438 of Cr.P.C. seeking grant of anticipatory bail.



8. On applying the proposition of law as laid down in the above cited cases to this case, it is observed that petitioners have sought invocation of provisions of Section 438 of Cr.P.C. by seeking grant of anticipatory bail after addition of offences punishable under Section 308 and 452 of IPC against them but it is not for the first time that they had been sought to be summoned to face trial under the aforementioned provisions because they had already been extended benefit of bail qua other offences of the same FIR and hence are assumed to be in constructive custody of law. As such, it cannot be stated that there was apprehension of their arrest on accusation for the first time and as such, the scope of Section 438 cannot be extended irrespective of the fact that the petitioners had joined investigation after addition of new offences. In view of the discussion as made above, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

9. It is, however, considered to be proper to note that the fact that the petitioners were extended benefit of bail earlier in this case and have also joined investigation after addition of the new offences, hence, it is expected that on their surrender and moving application for grant of regular bail, the trial Court would take a lenient view in the case and decide the regular bail application of the petitioners especially keeping in view the circumstance that the trial itself is at a fag end as the prosecution evidence has already been closed and the petitioners are not proved to have misused the



concession of interim order of stay of arrest as granted to them. The trial Court will also be liberty to dispose of the regular bail application on the very day when the same is presented by the petitioner upon their surrender.

10. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

24th July, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |