

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-16233-2020 (O & M)
Date of decision: 01.07.2020

Gurpreet Singh and anotherPetitioners

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Harpreet Singh Multani, Assistant A.G., Punjab
for the respondent.

Mr. S.P.S. Sidhu, Advocate
for the complainant.

ARUN KUMAR TYAGI, J. (ORAL)

The case has been taken up for hearing through video conferencing.

CRM-14457-2020

The prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 is for grant of permission to place on record amended CRM-M-16233-2020 alongwith documents Annexures P-1 to P-6 and for grant of exemption from filing certified copies of the abovesaid documents.

Learned State Counsel has no objection if the application is allowed.

In view of the facts and circumstances mentioned and no objection by the learned State Counsel the application is allowed and

amended petition CRM-M-16233-2020 is taken on record alongwith documents Annexures P-1 to P-6 with grant of exemption from filing certified copies of the same.

CRM-14194-2020

The prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 is for grant of exemption from filing certified copies of documents Annexures P-1 and P-2.

Learned Counsel for the petitioner has submitted that in view of the filing of amended CRM-M-16233-2020 alongwith documents Annexures P-1 to P-6, the present application has become infructuous.

Disposed of as having become infructuous.

Main Case

The petitioners have filed present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No. 102 dated 09.06.2020 registered at Police Station Koom Kalan, District Ludhiana under Sections 353, 186, 323, 427 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') to which Sections 307, 382 and 325 of the IPC were added later on.

The above said FIR was registered on statement made by Husandeep Singh Brar, Agriculture Development Officer who alleged that on 07.06.2020 in the evening information was received that accused-Gurpreet Singh alias Gopi was preparing the field for sowing paddy crop before 10.06.2020 the date notified by the Government of Punjab. On 08.06.2020 he alongwith Jatinderpal Singh, Agricultural

Officer, Nidhi Chaudhary Agriculture Development Officer and Charanjit Singh, Agriculture Sub- Inspector reached the village in their Ritz Car and asked accused-Gurpreet Singh alias Gopi about sowing of paddy crop prior to notified time who became furious, started abusing them and inflicted blow with spade aiming his head with an intention to kill him (Husandeep Singh Brar) but he raised his right arm due to which the spade blow fell on the elbow of his right arm which was fractured. When he tried to run away, then Gurpreet Singh alias Gopi gave another spade blow on his right leg which fell on right ankle. Thereafter, Gurpreet Singh alias Gopi gave spade blow aiming the head of Nidhi Chaudhary who retreated and the spade blow fell on her right thigh. Gurpreet Singh alias Gopi gave another blow aiming the head of Nidhi Chaudhary while she was running but the spade blow fell on the ground due to which wooden handle of the spade was broken. Gurpreet Singh alias Gopi snatched mobile phone of Nidhi Chaudhary and gave a number of blows on her back with the broken handle of spade tied in his hand. In the meantime, Sukhdev Singh father of Gurpreet Singh alias Gopi came on the spot and started hurling abuses and chased them with an intention to give blows with a *tangli* tied in his hand. Both Sukhdev Singh and Gurpreet Singh alias Gopi damaged their car.

Learned Counsel for the petitioners has submitted that petitioner No. 1 Gurpreet Singh has been arrested in the case on 25.06.2020 and the petition has become infructuous qua petitioner No.1 and prays that the prayer in the petition may be treated as restricted to

grant of anticipatory bail to petitioner No. 2-Sukhdev Singh.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case due to being father of main accused Gurpreet Singh @ Gopi. None of the injuries are attributed to petitioner No. 2- Sukhdev Singh. Offences under Sections 186, 323 and 427 of the IPC are bailable and only the offence under Section 353 of the IPC is non bailable. The offences under Sections 307 and 382 of the IPC have been added later on. There is no medical opinion as to any injury caused being dangerous to life and offence under Section 307 of the IPC is not made out. During investigation the Investigating Officer has recorded that prima facie offence of snatching of mobile phone is not made out. Petitioner No. 2- Sukhdev Singh is ready to join the investigation and his custodial interrogation is not required for effecting any recovery.

On the other hand learned State Counsel and learned Counsel for the complainant have argued that the petitioner No. 2- Sukhdev Singh actively participated in the offences and chased the concerned public servants with an intention to give blow with a *tangli* tied in his hand and the petitioner No. 2- Sukhdev Singh alongwith co-accused Gurpreet Singh @ Gopi damaged the vehicle in which the public servants were travelling. Custodial interrogation of the petitioner No. 2- Sukhdev Singh is required. Therefore, the petition may be dismissed.

The public servants visited the village on 08.06.2020 at about 12 noon to persuade the accused not to plant paddy crop before

the date notified as per the government instructions. The petitioner No. 2- Sukhdev Singh alongwith his co-accused Gurpreet Singh @ Gopi is alleged to have abused, chased and obstructed the public servants in discharge of their duties and to have damaged their vehicle. Co accused Gurpreet Singh @ Gopi is alleged to have caused injuries to the public servants concerned including lady officer who was part of the team of the public servants. The questions as to applicability of the provisions of Section 307 and 382 of the IPC have to be decided on the basis of evidence to be produced during trial and cannot be conclusively judged at this stage. Cases of assault or use of criminal force to obstruct/prevent public servants from discharging their duties are on the increase. Such cases have to be sternly dealt to curb the tendency of assaulting or using criminal force to public servants and the protective shield of law has to be extended to such public servants to enable them to effectively discharge their duties without any fear.

In P. Chidambaram v. Directorate of Enforcement (SC)
: 2019(4) R.C.R.(Criminal) 875 Hon'ble Supreme Court observed as under :-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of

anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. by The CBI v. Anil Sharma (1997) 7 SCC 187, the Supreme Court held as under:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced 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 materials 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 need 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."

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* (2005) 4 SCC 303, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

In **Jai Prakash Singh v. State of Bihar and another** (2012) 4 SCC 379, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu v. P.T. Manokaran** (2007) 4 SCC 434, **State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain** (2008) 1 SCC 213 and **Union of India v. PadamNarain Aggarwal** (2008) 13 SCC 305.)

Arrest of the petitioner will be a part of the process of investigation intended to secure several purposes as observed by

Hon'ble Supreme Court. The petitioner is to be questioned in detail regarding various facets of the crime. Custodial interrogation of the petitioner may provide information leading to discovery of material facts. Curtailing of his freedom is necessary in order to enable the investigation to proceed without hindrance and to protect witnesses.

In view of the facts and circumstances of the case, I am of the considered view that petitioner No. 2 cannot prima facie be said to have been falsely enroped in the crime and his custodial interrogation is necessary in the case and that petitioner No. 2 is likely to abscond and misuse his liberty and does not deserve grant of anticipatory bail.

In view of the above, the petition is dismissed.

01.07.2020

kavneet singh

(ARUN KUMAR TYAGI)

JUDGE

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