
(2021) 04 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 16206 Of 2021 (O&M)

Satnam Singh @ Dhabbu And Others

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 24-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 437(5), 439(2)

Indian Penal Code, 1860 — Section 148, 149, 323, 325, 438, 451, 459

Citation : (2021) 04 P&H CK 0091

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Narinder Lucky, S.S. Deol, Gurbir Singh

Final Decision : Allowed

Judgement

Amol Rattan Singh, J

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioners seek the concession of anticipatory bail, upon FIR no.472, dated

05.12.2020, having been registered at Police Station City Barnala, alleging therein the commission of offences punishable under the provisions of

Sections 451, 323, 148 and 149 of the IPC, with Sections 325 and 459 thereof added subsequently in the FIR.

Today learned counsel for the petitioners cites a judgment of the Supreme Court in Pradeep Ram v. The State of Jharkhand and others (Crl. Appeal

no.816-817 of 2019, decided on 01.07.2019), wherein, after discussing the case law on the issue of a right of an accused to continue to remain on bail

after bail was already granted to him in respect of offences earlier mentioned in the FIR, upon the addition of offences subsequently in the same FIR,

it was held in paragraph 29 of that judgment as follows:-

â??In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused,

further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can

certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been

granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who

has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be

necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to

arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the

Court which had granted the bail.â??

In the present case the FIR was registered against the petitioners, with 4-5 other persons also arraigned as accused, for the commission of offences

punishable under the provisions of Sections 451, 323, 148 and 149 of the IPC.

The offences punishable under Sections 451 and 323 of the IPC being bailable offences, the petitioners were stated to have been admitted to bail on

the date of the registration of the FIR itself, i.e. 05.12.2020.

Thereafter, with one of the injuries caused on the uncle of the complainant having been found to be a fracture on his arm, an offence punishable under

Section 325 of the IPC was added along with an offence punishable under the provisions of Section 459 of the IPC, and with the offence punishable

under Section 451 thereof having been deleted.

That having happened, the petitioners applied for pre-arrest bail under the provisions of Section 438 of the IPC before the learned Sessions Court, with

that petition having been dismissed by the learned Addl. Sessions Judge,

Barnala, vide his order dated 01.04.2021, holding essentially that the petitioners having scaled the house of the complainant party and with one person having received a grievous injury, their custodial interrogation would be required, that having been the stand taken by the public prosecutor before that court.

When the matter came up before this court yesterday, learned counsel had wished to cite a judgment to submit that once a person had been admitted

to bail in respect of certain offences, he would normally be allowed to remain on bail even after the addition of subsequent offences; however, a

perusal of that judgment cited by him today, referred to hereinabove, does not actually support his contention and in fact it has been held by the

Supreme Court that, firstly, an accused may surrender (after the addition of new offences) and seek bail from the court in respect of those newly

added offences, with it also however stated that the investigating agency cannot arrest an accused already on bail without first making an application

for arrest of such accused to the court, which could then exercise its jurisdiction under the provisions of Sections 437 (5) or 439 (2) of the Cr.P.C.

Learned State counsel submits that he has not received any specific instructions as to whether their custodial interrogation is required so far or not.

On the other hand, learned counsel for the complainant submits that the trial court (learned Addl. Sessions Judge) already having refused bail to them

on the contention raised by the learned Public Prosecutor, the petitioners may not be now admitted to bail by this court.

He further submits that in fact, as per the FIR, there were 4-5 unknown persons along with the petitioners, who had allegedly scaled the wall of the of

the complainant and thereafter, along with the petitioners, had inflicted injuries on the complainant party.

He submits that the identity of those 5 persons has still not revealed by the petitioners and therefore they in any case do not deserve the concession of anticipatory bail.

Though learned counsel for the petitioners submits that in fact the grievous injury (leading to an addition of an offence punishable under Section 325 of

the IPC) was caused by Gurbax Singh, learned State counsel submits that as per his instructions, despite the FIR stating so, subsequently, in a

supplementary statement made, the complainant had stated that in fact it was

petitioner no.4, Nikka Singh @ Manpreet Singh, who had caused the grievous injury on the arm of Richhpal Singh and that Gurbax Singh (not a petitioner herein) had caused an injury (simple injury) with a stick on the arm of the complainant.

In view of the above, without making any comment on the actual merits of the case, seeing the ratio of the judgment of the Supreme Court in Pradeep

Ramsâ?? case (supra), with the Public Prosecutor already having taken a stand before the learned Addl. Sessions Judge that the petitionersâ??

custodial interrogation is required, and even counsel for the petitioners, upon query, submitting that the houses of the petitioners have been continuously

raided by the police so as to arrest them, I do not think this to be an appropriate case where the petitioners can be admitted to anticipatory bail, with it

to be observed by this court that it is not only a question of an individual amongst the petitioners/their co-accused, whose specific role is to be seen, but

the role of all the petitioners collectively, with the offences punishable under Sections 148 and 149 also having been alleged to have been committed,

as per the FIR.

Consequently, this petition is dismissed.

However, in case of the arrest of the petitioners/their surrender before the trial court, naturally, they would be at liberty to file an appropriate

application before the competent court seeking bail under the provisions of Section 439 of the Cr.P.C, which application would be considered wholly

on its own merits by that court.

It is, however, also to be observed that this very bench has possibly allowed other petitions in which bail was sought after the addition of more

offences in an FIR registered. However, those orders have not been traced out either by counsel appearing in this case, or even by me.

Therefore, it is to be further observed that possibly in those cases, no specific stand had been taken that custodial interrogation of the accused, in the

context of the added offences, was required, whereas in the present case, it has been the specific stand of the prosecution that custodial interrogation

of the petitioners is required, especially in view of the fact that, as pointed out by counsel for the complainant, the names of other co-accused are still

to be disclosed, as had allegedly entered into the house of the complainant by scaling the wall thereof. Hence, I would see no reason to entertain this

petition (as has been held hereinabove).