

IN THE COURT OF MS. ANJANA, ADDITIONAL SESSION JUDGE,
MOGA.

BA No.426 Dated 14.12.2020
CIS No.BA/2323/2020
CNR No.PBMO01004898-2020
Decided on :- 21.12.2020

State of Punjab

Versus

Gurmukh Singh alias Gora son of Tota Singh resident of Ward No.01, Kalke
Road, Baghapurana, Tehsil Baghapurana, District Moga.

.....Applicant/Accused.

FIR No.157 dated 02.10.2020,
U/ss 307, 452, 323, 34 IPC,
Police Station Baghapurana.

Bail Application Under Section 438 Cr.P.C

Present: Sh. Ramesh Grover Advocate, for applicant/accused
Sh. Anshuman Syal Addl.PP for the State assisted by
Sh. Sukhdev Singh, Advocate for the complainant

ORDER

1. Virtual court room set up through Vidyo App. Learned Addl.PP for State is online from his office. This order of mine shall dispose of bail application under section 438 Cr.P.C for grant of anticipatory bail, in case FIR No.157 dated 02.10.2020, U/ss 307, 452, 323, 34 IPC, registered at Police Station Baghapurana.

2. In pursuance of the notice of the bail application having been issued learned Addl. PP for the State, Sh. Anshuman Syal, has put in appearance through video conferencing. IO is present through Video Conferencing while sitting in police station. Relevant record perused through Video Conferencing.

3. Learned counsel for accused/applicant has contended that a

false case has been registered against accused/applicant by the complainant by fabricating false injury on his person. No injury has been caused by the applicant to the complainant etc. The applicant/accused has nothing to do with the alleged commission of offences. The story made by the prosecution is concocted one and just to harass and humiliate the accused/applicant. Since, nothing is to be got recovered from the accused/applicant, as such his custodial interrogation is not required. Lastly, prayer has been made for acceptance of bail application.

4. On the other hand, learned Addl. P.P. for the State assisted by learned counsel for the complainant has opposed the bail application on the ground that recovery of weapon is yet to be effected from the accused/applicant. Therefore, keeping in view the gravity of offence, they prayed for dismissal of the bail application.

5. After giving my careful and thoughtful consideration to the rival contentions and on careful perusal of averments of application, contents of FIR coupled with the duly assistance rendered, the Court is of the considered view that present bail application merits dismissal. From the perusal of file, it shows that present FIR was registered on the statement of complainant Gurinderjit Singh on the allegations that on 28.09.2020, at about 8.00 PM, he was present in his house and he was talking with his family members after taking the dinner. In the meantime, accused/applicant Gurmukh Singh armed with khanda alongwith co-accused Pardeep Singh came at the spot on Splendor motorcycle and they had entered into his house and upon entrance, co-accused Pardeep Singh raised lalkara to teach him a lesson for doing the contractor work. Accused/applicant Gurmukh Singh gave khanda blow which hit on his left eye and accused/applicant Gurmukh Singh gave another blow of khanda, which hit on ring finger of his left hand. Co-accused Pardeep Singh took spade which was lying in his courtyard and hit the same upon his forehead with an intention to kill him. Upon hearing his hue and cry, his wife Manjit Kaur came at the spot to rescue him and co-accused Pardeep Singh gave spade blow which hit on the thumb of left hand of his wife. Thus, accused/applicant with the common intention of his co-accused has assault upon him with an intention to kill

him.

6. From the statement of ASI Paramjit Singh got recorded through video conference, it shows that accused/applicant Gurmukh Singh gave khanda blow on the left eye of the complainant and he also gave another blow of khanda, which hit on the ring finger of left hand. For the recovery of weapon, the custodial interrogation of the accused/applicant is required in the present case. Therefore, from the perusal of record, it clearly shows that there are specific allegations against the accused/applicant that he alongwith his co-accused trespassed into the house of complainant and caused injuries to the complainant and his wife with an intention to kill them. Moreover, accused/applicant has been specifically named in the FIR. Therefore, this court is the considered opinion that for facilitating thorough and fair investigation as well as for the recovery of weapon used for the commission of crime, the custodial interrogation of accused/applicant is very much required. Thus after taking totality of facts of the present case taken into consideration coupled with the ratio decidendi laid down by the Constitution Bench of the Hon'ble Apex Court in case **Gurbax Singh Sibia Versus State of Punjab 1980 (2) Supreme Court Cases 565** wherein it has been made abundantly clear that *while deciding an application under section 438 Cr.P.C., the Court has to strike balance between the liberty of citizen and interest of general public at large. The provisions of section 438 Cr.P.C. are intended to protect the people from the process, which may suggest abuse of law but certainly not intended to benefit the people, who has much to explain of the FIR, which prima facie is in conflict with law.* Thus, in order to facilitate thorough and fair investigation, the court does not find it a fit case for according concession of anticipatory bail. Hence, the present bail application being bereft of any substance is hereby dismissed. File of bail application be consigned to record room.

Pronounced.
21.12.2020.
(Sunny Stenographer II)

(Anjana),
Addl Sessions Judge,
Moga. (UID No.PB0448)

Present: Sh. Ramesh Grover Advocate, for applicant/accused
Sh. Anshuman Syal Addl.PP for the State assisted by
Sh. Sukhdev Singh, Advocate for the complainant

Sh . Sukhdev Singh, Advocate apperaed and filed power of attorney on behalf of the complainant. Separate statement of ASI Paramjit Singh recorded through video conference. Arguments also heard through video conference. Vide my separate order of even date, the present bail application stands dismissed, for the reasons as indicated therein. File be consigned to the Record Room.

Pronounced.
21.12.2020
(Sunny Stenographer II)

(Anjana),
Addl Sessions Judge,
Moga. (**UID No.PB0448**)