

(2021) 02 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous Petition (M) No. 43513 Of 2020 (O&M)

Rashma Kuthiala

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision: Feb. 1, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 437(1), 437(ii) 438
- Indian Penal Code, 1860 - Section 120B, 148, 149, 307, 324, 323, 326

Hon'ble Judges: Jaishree Thakur, J**Bench:** Single Bench**Advocate:** Dr. A.R. Sidhu, Shiv Kumar, Monika Jalota, Amit Jhanji**Final Decision:** Dismissed

Judgement

Jaishree Thakur, J

1. The instant petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in the event of

arrest in FIR No. 241 dated 23.11.2021, registered under Sections 307, 324, 323, 120-B, 148, 149 (Section 326 added later on) of the Indian Penal

Code at Police Station Division No. 2, District Pathankot.

2. Learned Senior Counsel for the petitioner would contend that the petitioner herein has been falsely implicated in the present case as no role or injury

has been attributed to her. In fact, the alleged dispute arises out of a civil litigation, which is already pending between the parties. It is also argued that

as per proviso (ii) of Section 437 (1) of the Code of Criminal Procedure, 1973, the Court may direct a person to be released for a non-compoundable

offence, if such a person is under the age of sixteen years or is a woman or is sick or infirm and in the present case the petitioner is a woman and

would undertake to comply with any direction given by this Court, if allowed anticipatory bail.

3. Reply has been filed by the complainant, wherein it is categorically averred that there is pending litigation between Rashma Kuthiala, the petitioner

herein and the complainant family pertaining to the land measuring 15 kanals 14 marlas situated in revenue estate of Village Anandpur, Hadbast No.

336, Tehsil and District Pathankot. In the civil litigation filed by the father of the complainant, the petitioner and others, who are none other than her

brother, had been restrained from interfering in the peaceful possession of the complainant and his family members. However, despite injunction order,

the petitioner and her brother Bharat Chaudhary continued to raise construction on the land, consequent to which various complaints were filed to the

Senior Superintendent of Police, Pathankot. These complaints are dated 4.5.2020, 5.8.2020, 6.8.2020 and 8.8.2020. However, the petitioner did not

mend her ways and continued with the construction. She in fact was instrumental in organizing several persons to attack upon the complainant and his

brother. The assailants came armed with kirpan, iron rod, baseball bat and attacked upon the brother of the complainant, namely Rajiv Puri. When the

complainant tried to save his brother, he too was given blows by a baseball bat. It is argued that the brother of the complainant suffered several

injuries, including fracture in the skull and other parts of the body, which are dangerous to life. As per the Medico Legal Report, the brother of the

complainant suffered the following grievous injuries:-

1) X-ray skull shows fracture of frontal bone on left side in the given film.

2) NCCT Head shows cut fracture on frontal bone on left side in the given film & the underlying brain Parenchyma is normal. and therefore,

Section 326 IPC has been added in the said FIR.

4. Learned counsel appearing on behalf of the respondent, State as well as the complainant would also argue that the petitioner is the main person

who has vested interest in the property, which is already under litigation and she conspired with other accused to kill the brother of the petitioner

despite the fact that an injunction order has been passed by the civil court restraining her from interfering in the peaceful possession of the land in

possession of the petitioner and his family members. It is also argued that most of the accused are absconding and the petitioner will only be the

person from whom further information can be elicited with regard to the offence and the conspiracy angle involved in it. It is also contended that the

material available on record clearly makes out the offences as alleged and as such, the petitioner is not entitled to the concession of anticipatory bail

and her custodial interrogation is necessary.

5. I have heard counsel for the parties and have gone through the pleadings of the case.

6. A reading of the FIR would reflect that there is a civil dispute pending between the petitioner herein and family members of the complainant. The

petitioner herein tried to construct a house in the said plot despite an injunction in her favour restraining her from doing so. When the family of the

complainant tried to stop her from raising said construction, the petitioner herein allegedly organized several persons to attack upon the brother of the

complainant, who has suffered grievous injuries as mentioned in the MLR. There are specific allegations against the petitioner that she along with

other co-accused planned the attack in the manner mentioned in the FIR. The arguments that no injury has been attributed to the petitioner or that no

recovery is to be effected from her or that she being a woman would be entitled to anticipatory bail would not be sustainable. In view of the

allegations made in the FIR, gravity of the offence and the grievous injuries suffered by the victim, this court is not inclined to grant anticipatory bail to

the petitioner.

8. In view of the above, the instant petition is hereby dismissed. However, it is made clear that any observations made herein above would have no

bearing on the merits of the case.