

In the High Court of Punjab and Haryana at Chandigarh

Crl.Misc.No.M- 22366 of 2009 (O&M)
Date of decision: 28.1.2010

Gurvinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Sushil Saini, Advocate,
for the petitioner.

Mr.Amandeep Singh Rai, AAG, Punjab.

SABINA, J.

By way of this petition filed under Section 482 of the Code of Criminal Procedure, petitioner has primarily sought directions to respondent Nos. 2 and 3 to arrest respondent Nos. 4 and 5 in case FIR No. 92 dated 26.5.2009 under Sections 323/ 324/ 452/ 380/ 427/ 148/ 149 of the Indian Penal Code registered at Police Station City Gurdaspur.

It has been held by the Apex Court in **M.C.Abraham and another** vs. **State of Maharashtra and others**, 2003 (1) RCR (Criminal) 452 as under:-

14. Tested in the light of the principles aforesaid, the impugned orders dated 10th January, 2002 and 11th January, 2002 must be held to be orders passed by over-stepping the para-meters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of

the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The Section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the Court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does effect the reputation and status of the citizens, the

power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

15. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the Court on mere apprehension that he may be arrested. The Court may or may not grant anticipatory bail depending upon the facts and

circumstances of the case and the material placed before the Court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations.”

Since the petitioner is seeking direction for arrest of the private respondents, no interference by this Court is called for.

Accordingly, this petition is dismissed.

**(SABINA)
JUDGE**

January 28, 2010

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