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BHAWANA GUPTA AND OTHERS V/S STATE OF PUNJAB

Present: Mr. R.S.Rai, Sr. Advocate,
Mr. Chetan Mittal, Sr. Advocate,
with Mr. Pawan Narang, Advocate,
and Mr. Kunal Mulwani, Advocate,
and Mr. Gautam Dutt, Advocate,
and Mr. Mayank Aggarwal, Advocate,
and Mr. Udit Garg, Advocate,
and Mr. Arjun S. Rai, Advocate,
and Mr. Lokesh Narang, Advocate,
and Mr. Farhad Kohli, Advocate,
and Ms. Sukriti Rai, Advocate,
for the petitioners.

Mr. Gaurav Garg Dhuriwala, Addl. A.G. Punjab,
and Mr. Ferry Sofat, Advocate,
for the respondent-State.

Ms. Rupinder Kaur Sran, ADCP-I, Ludhiana.

Mr. Dhuriwala, at the very outset, contends that a detailed reply to the petition for quashing needs to be filed as earlier only a short reply by way of an affidavit dated 08.05.2023 had been filed on the limited aspect.

Learned senior counsel for the petitioners has submitted that petitioners No. 2 and 3 also deserve the benefit of interim bail, as has been granted to petitioner No. 1, rather they are better placed as no non-bailable offence is made out qua them. Referring to the FIR, learned senior counsel for the petitioners asserts that the allegations, if any, primarily are against petitioner No. 1 under the SC and ST (Prevention of Atrocities) Act, 1989.

As regards petitioner No. 2, there is no allegation except for some arguments which he entered into with the complainant and the others. No other overt act has been attributed to him.

As regards petitioner No. 3, who is the driver of the vehicle, the

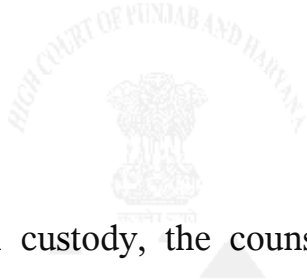
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allegations and assertions are that he was driving the vehicle recklessly which led to the ramming of the vehicle into the complainant leading to an injury on her right hand as well as damage of her mobile which fell from her hand. Learned senior counsel for the petitioners, on this basis, contends that the bailable offences, as alleged to have been committed by petitioners No.2 and 3, should have been taken note of by the officer who had taken these petitioners into custody as it is nowhere a case that an option was given to them for submitting bail bonds, which were not submitted by them.

Assertion has also been made that at the time of judicial remand, which has been granted by the Duty Magistrate, Ludhiana, when the petitioners were produced before him, committed an illegal act contrary to the statutory requirement where again the petitioners, especially when not required for investigation purposes, should have been released on bail. Similarly, when the petitioners were produced before the Special Court, Ludhiana, the said Court also, in a mechanical manner, remanded the petitioners including petitioners No. 2 and 3 to judicial remand without verifying and ascertaining the nature of the offences alleged to have been committed by them. He contends that the Investigating Agency also had not pressed for their police remand, which shows that they were not required by the police for the purposes of investigation.

Learned Additional Advocate General for the respondent-State contends that the petitioners had an option to move an application under Section 439 Cr. P.C., which remedy they have not availed of till date.

When confronted with the fact as to whether the custody of petitioners No. 2 and 3 would be in accordance with law irrespective of the fact that there is an order passed by the Judicial Magistrate and the Special



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Court for their judicial custody, the counsel could not support the said orders of the Courts on this aspect as no non-bailable offences against petitioners No. 2 and 3 are made out. He, however, insists that there being an order passed by the competent Court remanding them to judicial custody, their custody cannot be said to be illegal.

Learned senior counsel for the petitioners contends that the custody of petitioners No. 2 and 3 being illegal, they need not to keep in custody merely because the petitioners have, instead of approaching the trial Court, approached the High Court by way of present petition. Assertion has also been made that in case the petitioners now approach the trial Court, the said Court would not entertain their petition in the light of the fact that a prayer in the present petition has been made for grant of bail under the same provisions. Assertion has, thus, been made that the agony of the petitioners in custody, which, in any case, is illegal, may not be permitted to be perpetuated.

Having considered the submissions made by the learned counsel for the parties and keeping in view the facts and circumstances of the present case, where on the bare reading of the FIR and as per the short reply, which has been filed by the respondents, the factual aspect is not disputed with reference to the allegations against the petitioners especially with regard to petitioners No. 2 and 3. The said allegations in the FIR do not make out an offence which would be non-bailable qua them.

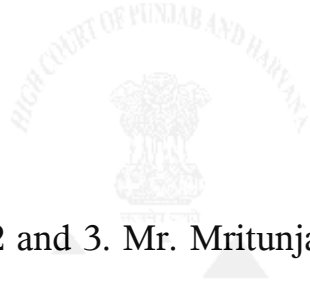
Under those circumstances, firstly, the officer, who had taken these two petitioners in custody, could not have done so without making them aware of the fact that they could avail of the remedy of release on submission of bail bonds or surety. The same would be the position as

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regards the order of remand at the hands of the Duty Magistrate as also the Special Court. It appears that at no stage, the provisions of the Statute were actually gone into or seen. In a mechanical manner, initially the Arresting Officer and thereafter, the Judicial Officers proceeded to pass orders of arrest and remand. Continuance of a citizen in custody without there being a mandate of law i.e. illegal custody cannot be permitted. A Court and that too, a Constitutional Court, when comes to know of the same, cannot shut its eyes to the same. Would it be appropriate to a citizen to continue in incarceration when it is not only apparent from the allegations but an undisputed position that petitioners No. 2 and 3 have not committed the alleged offences which are non-bailable?

These aspects with regard to the life and personal liberty of a citizen viz-a-viz the non-mentioning of a provision or wrong mentioning of a provision in a petition, which has been filed, could be a ground for denial of a remedy which the citizen is found to be eligible and entitled to, need to be gone into in detail. Another aspect, which needs to be considered, is the power, ambit and scope of the High Court to exercise its jurisdiction under Section 482 Cr. P.C. read with Article 21 of the Constitution especially when the High Court not only exercised its powers under the Criminal Procedure Code but is mandated and required to protect the life and liberty of a citizen constitutionally.

These being prima-facie the principled questions, which need to be decided apart from the other issues, as has been raised in the present petition and by the State, as recorded in the order dated 06.05.2023 as also mentioned by the learned Additional Advocate General, Punjab today and recorded above, as an interim measure, therefore, this Court grants interim



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bail to petitioners No. 2 and 3. Mr. Mritunjay Kumar son of Sh. Satish Rai and Parmender Singh Rawat son of Sh. Rajendra Singh are ordered to be released on interim bail to the satisfaction of the Judicial Magistrate/Duty Magistrate, Ludhiana.

This order shall not be an impediment or bar to the petitioners to avail of their statutory remedy, as available to them under Section 439 Cr. P.C.

It is made clear that any opinion, as has been expressed by this Court in the order above, is not a conclusive opinion as of now and it is for the purposes of protecting the constitutional rights of the petitioners that the power has been exercised.

Learned senior counsel for the petitioners asserts that he would move an appropriate application for formally impleading the complainant as a party respondent to the petition although she had been intimated about the pendency of these proceedings as informed to this Court on 08.05.2023 in compliance of the order dated 06.05.2023. This Court is also of the view that the complainant needs to be heard before the petition can be decided as has been framed and prayers made therein.

Learned counsel for the respondent-State prays for and is granted 10 days' time to file reply to the petition for quashing of the FIR. May do so with advance copy to the counsel for the petitioners.

Hearing of the case is deferred to **22.05.2023**.

Interim order passed in favour of petitioner No. 1 shall stand extended till the next date of hearing.

Copy of this order be given **dasti** to the counsel for the petitioners as well as the State under signatures of the Special Secretary of



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this Court.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

09.05.2023

pj

