

CRM-M-36391-2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-36391-2015 (O&M)

Date of Decision: November 03, 2015

Rajbir

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.S.K.Garg Narwana, Sr.Advocate with
Mr.Karan Garg, Advocate
for the petitioner.

Mr.Pawan Gaur, DAG, Haryana.

Mr.Rajesh Lamba, Advocate
for the informant.

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- 1. *Whether Reporters of local papers may be allowed to see the judgment ?***
- 2. *To be referred to the Reporters or not ?***
- 3. *Whether the judgment should be reported in the Digest?***

NARESH KUMAR SANGHI, J.(Oral)

Prayer in this petition, filed under Section 439, Cr.P.C.,
is for grant of regular bail to the petitioner, Rajbir son of Suraj
Bhan, resident of village Balana, Police Station, Israna, District
Panipat, who has been booked for having committed the offences
punishable under Sections 120-B, 148 and 302 read with Section

149, IPC, in a case arising out of FIR No.148, dated 28.06.2013, registered at Police Station, Israna, District Panipat.

Learned counsel for the petitioner submits that the informant in the present case is Sandeep, who is brother of Pardeep (since deceased). As per First Information Report (FIR), three days prior to 27.06.2013, Jasmer, co-accused of the petitioner, was constructing a drain in the *panchayat* land and when the said drain had reached up to the land belonging to the informant side, then Pardeep (since deceased) objected to the construction of the drain in his land.

On 27.06.2013, in the evening, i.e. after three days of the previous incident, Pardeep (since deceased) was encircled by approximately twenty persons and caused injuries. The informant, Sandeep, received the information on mobile phone and reached at the spot near Arya Samaj Mandir and witnessed the occurrence. One Vikram had also arrived at the spot after the incident. With the help of Vikram, Sandeep carried Pardeep to Prem Kumar Hospital at Panipat. Due to injuries received Pardeep had ultimately died. On the next day, i.e. 28.06.2013, the matter was reported to the police in which the petitioner was not named as assailant.

Learned counsel representing the petitioner further submitted that except the disclosure statements of co-accused of the petitioner and disclosure statement of petitioner-Rajbir, there is no evidence to connect the petitioner with the murder of Pardeep. He further pointed out that in pursuance of the disclosure statement suffered by the petitioner, Rajbir, a stick was allegedly recovered, but no blood stains were detected by the Seriologist of the Forensic Science Laboratory, Madhuban. He further submits that the disclosure statements suffered by the petitioner and his co-accused are in the shape of self -confession and the same cannot be read against the petitioner after filing of the charge-sheet (report under Section 173, Cr.P.C.). He further pointed out that all, except two prosecution witnesses, have already been examined, therefore, releasing of the petitioner on bail would not in any manner be prejudicial to the interest of the prosecution.

Learned counsel for the State has not controverted the factual aspect that the petitioner was not named by Sandeep while lodging the FIR. Except the disclosure statements suffered by co-accused of the petitioner and the petitioner Rajbir, there is no evidence to connect the petitioner with the murder of

Pardeep.

Learned counsel representing the informant vehemently opposed grant of bail on the grounds that only two witnesses are remained to be examined by the prosecution; the main accused, Jasmer, who was granted interim-bail on medical grounds, had since absconded and declared as a proclaimed offender; during pendency of the trial, Jasmer had extended threats to the witnesses not to depose against the accused; and that during investigation, the call details of the mobile phones used by the accused persons were collected by the Investigating agency, which clearly showed presence of the petitioner at the spot. Learned counsel for the informant has further expressed his apprehension that if the petitioner is granted bail, then he might abscond like his co-accused, Jasmer.

Learned counsel for the State as well as counsel for the informant further pointed out that during his deposition before the Court, Sandeep has specifically named the petitioner as assailant.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

To connect the petitioner on the basis of the disclosure statements of the accused, would be a moot point during trial. The petitioner is behind the bars for the last two years and approximately two months. Most of the prosecution witnesses have been examined, therefore, release of the petitioner on bail would not be detrimental to the interest of the prosecution.

The apprehension expressed by learned counsel for the informant that the petitioner might run away from the trial, cannot be the ground for denying bail to the petitioner, if otherwise he is entitled to.

As a sequel to the above discussion, the petition is allowed. The petitioner, Rajbir son of Suraj Bhan, resident of village Balana, Police Station, Israna, District Panipat, is ordered to be released on bail during pendency of the trial of the present case subject to his furnishing bonds in the sum of ₹1,00,000/- (Rupees one lac only) with two sureties in the like amount to the satisfaction of learned Chief Judicial Magistrate/ Duty Magistrate, Panipat.

If the petitioner, in any manner, threatens the prosecution witnesses or does not cooperate in disposal of the trial of the present case, the prosecution or the informant shall

have liberty to move this Court for withdrawal of the concession
of bail granted to the petitioner.

November 03, 2015
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(NARESH KUMAR SANGHI)
JUDGE