

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

**CRM-M No.6902 of 2019
Decided on: 15.03.2019**

Dusehra

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Aman Pal, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.106 dated 03.05.2016, for offence punishable under Sections 148, 149, 302, 323, 120-B of the Indian Penal Code (in short 'IPC') at Police Station Uchana, District Jind.

Counsel for the petitioner has submitted that after registration of the FIR, no challan was presented against the petitioner and for a period of about 2½ years, the petitioner was not arrested. It is further submitted that when the police party raided the house of the petitioner, he moved an application for interim bail, which was declined by the trial Court and thereafter, he filed CRM-M No.54096 of 2018 before this Court and the same was dismissed as withdrawn on 13.12.2018 with a direction to the trial Court to decide the regular bail application of the petitioner expeditiously. Thereafter, the regular bail

application of the petitioner was also declined by the Additional Sessions Judge, Jind, vide order dated 20.12.2018. The petitioner has surrendered before the trial Court thereafter and he is in custody.

Counsel for the petitioner has relied upon the order dated 06.08.2018 passed in CRM-M No.12307 of 2018, wherein the following order was passed by this Court:-

“These petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to petitioners Navraj and Anand in case FIR No. 106 dated 03.05.2016, registered under Sections 302, 223, 148, 149 and 120-B of the IPC at Police Station Uchana, District Jind.

Learned counsel for the petitioners submitted that as per the allegations in the FIR, the complainant has a share in the land out of which the father of the petitioners Ishwar and one Om Parkash had purchased a plot, vide sale deed dated 22.12.2015 and the dispute arose thereafter with regard to possession of the said land. It is further submitted that a perusal of the FIR would show that the incident was spontaneous and not a premeditated one. Learned counsel for the petitioners has further submitted that the petitioners are in judicial custody since 03.05.2016 and out of 27 prosecution witnesses, 12 witnesses including the complainant as well as the eye-witnesses have already been examined and there is no possibility that the petitioners will influence any prosecution witness.

Learned counsel for the petitioners has further submitted that out of total 12 accused persons, 06 co-accused have already been granted bail by the trial Court and two accused, namely Om Parkash and Rohtash, were granted concession of regular bail by this Court, vide

order dated 15.12.2017, passed in CRM-M No. 20405 and 38911 of 2017, which reads as under:

“This order shall dispose of CRM-M-20405-2017, filed by petitioner-Om Parkash and CRM-M-38911-2017, filed by petitioner Rohtash, under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.106 dated 03.05.2016, registered at Police Station Uchana, District Jind, under Sections 302, 323, 148, 149 and 120-B of the Indian Penal Code.

Notice of motion was issued in these petitions. Learned State counsel appeared on behalf of respondent-State and complainant also appeared through his counsel. They contested these petitions.

I have heard learned counsel for the parties as well as learned State counsel and gone through the record.

From the record, I find that private witnesses have already been examined in this case. Both the petitioners namely Om Parkash and Rohtash are stated to be armed with lathis. They had not given any injury to the deceased. Only simple injuries on the injured are attributed to the petitioners.

Petitioner-Om Parkash and petitioner-Rohtash have been in custody since 06.05.2016 and 17.07.2016, respectively. They are not required for any investigation or interrogation purposes as they are in judicial custody. 20 prosecution witnesses are still to be examined. The trial of the case will take long time. No useful purpose will be served by keeping the petitioners in custody till the final disposal of the case.

Keeping in view the facts and circumstances of the present case; without discussing the facts in

minute details; without expressing any opinion on the merits of the case and in view of the fact that no injury was given to the deceased by the petitioners and simple injuries on the injured are attributed to the petitioners, both these criminal miscellaneous petitions are allowed and the petitioners are ordered to be released on bail subject to their furnishing personal bonds in the sum of Rs. 50,000/- with one surety in the like amount each to the satisfaction of the trial Court/Duty Magistrate.”

Learned counsel for the petitioners has further submitted that the petitioners have set up a defence with regard to their possession over the land as well as they have also put up the photographs/CCTV footage to prosecution witnesses in cross-examination and, therefore, it can be seen only at the time of final disposal of the case, which party acted as an aggressor.

Learned State counsel, on instructions from ASI Dharam Pal, has not disputed the factual position and submitted that 12 prosecution witnesses have been examined and the case is fixed for recording of the remaining evidence.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the arguments raised by the parties and also considering the fact that the petitioners are in judicial custody for more than two years and the case is still fixed for recording the prosecution evidence and also in view of the fact that co-accused of the petitioners, including Om Parkash and Rohtash, have already been granted regular bail vide order dated 15.12.217 passed in CRM-M No. 20405 and 38911 of 2017; the instant petitions are allowed. The petitioners Navraj and Anand are ordered to be released on regular bail on their furnishing bail/surety

bonds to the satisfaction of the trial Court/Duty Magistrate/Illqa Magistrate, concerned.”

Counsel for the petitioner has submitted that the allegations against the petitioner are of similar in nature and the supplementary challan against the petitioner has also been presented and the petitioner is not required for any further investigation.

Counsel for the State, on instructions from HC Rajinder Kumar has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in judicial custody and he is not involved in any other case; the direct allegations are against the main accused – Ishwar and similarly situated co-accused of the petitioner i.e. total 12 accused persons have already been granted the concession of bail and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

15.03.2019

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No