

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

**Criminal Misc. No. M-20837 of 2018 (O&M)
Date of decision: 09.01.2019**

Mahesh

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Deepkaran Singh Dalal, Advocate
for the petitioner.

Mr. R.S. Doon, AAG, Haryana
for the respondent -State.

Mr. Abhishek Goyal, Advocate
for the complainant.

Daya Chaudhary, J.

Petitioner-Mahesh has approached this Court by way of filing the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.118 dated 23.02.2017 registered under Sections 148, 149, 302, 341, 506 IPC at Police Station Hodal, District Palwal during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case. There was an unexplained delay of two days in lodging of the complaint as the alleged occurrence took place on 21.02.2017 and the complaint was lodged on 23.02.2017. The petitioner is nephew of complainant and civil litigation of ancestral land is pending between the parties. As per allegations levelled in the FIR, the petitioner has

been attributed with a role of assault because of civil litigation pending between the parties. The deceased received simple injuries and none of the injuries was on vital part of the body. Learned counsel further submits that no specific injury has been attributed to the petitioner and the deceased died due to Asphyxia after more than 36 hours of the alleged incident. Learned counsel also submits that as per post mortem report, the deceased did not die due to injuries received during alleged assault. As per statements of PW1-Dr. Ashutosh Sharma and PW2-Dr. Mahender Singh, Medical Officer, Government Hospital Palwal, the injuries could be possible by a fall on the hard surface. Learned counsel also submits that the investigation qua the present petitioner has been completed as challan has been presented and charged were framed on 27.07.2017. The petitioner is in custody since 09.03.2017. Out of total six accused persons, five have already been released on bail. No purpose would be served by keeping the petitioner in custody. Statements of material witnesses have also been recorded. As per cross-examination of complainant-Sham Lal, hidden injuries with rods, kicks and slaps were received by him, the deceased and other family members but they were not medico legally examined. It has also been stated that he did not mention in his complaint Ex.PW3/A that he and his wife also received injuries in the incident. It has also been mentioned that 10/15 persons came after hearing about the incident but he did not know their names. Even he did not make any inquiry regarding their names. Further it has been stated that no outsider had intervened and assailants ran away. It has also been mentioned in the statement that the clothes were blood stained in the process of shifting injured to the hospital but the same were not

produced before the Investigating Officer. It has also been mentioned in the statement that the injured was taken to the hospital by hiring taxi but he did not remember the registration number of the taxi as well as name of driver. It has also been mentioned in the statement that the complainant and other persons frightened on seeing the accused persons but they did not give any threat.

Learned State counsel has not disputed the custody period as well as release of all the accused persons on regular bail and stage of trial.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

By considering the submissions made by learned counsel for the petitioner that the petitioner is in custody since 09.03.2017; role attributed to the petitioner as no specific injury has been attributed to him and the deceased died due to Asphyxia and also by considering the inconsistency in the statement of the complainant, the present petition is allowed and the petitioner (Mahesh) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

09.01.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No