

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13003-2019

Date of decision: 28.03.2019

Ram Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. J.S. Mehndiratta, Advocate and
Ms. Kanika Ahuja, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.318 dated 22.06.2017 under Sections 148, 149, 302, 341 IPC (challan was presented under Sections 302, 323, 325, 341, 34 IPC), registered at Police Station Sadar, Bahadurgarh, District Jhajjar.

Learned senior counsel for the petitioner submits that as per allegations in the FIR, deceased Rajesh, brother of complainant Krishan, had gone to his fields on 22.06.2017 and when he along with his wife Parmila were returning from the fields on a motorcycle, 07 persons including the petitioner, who were sitting near the office of one Sonu Chairman, threw stones on him, on account of which Rajesh and his wife Parmila fell down from the motorcycle. Thereafter, co-accused Rakesh inflicted a jaily (two pronged agriculture

implement) blow on the neck of Rajesh, Mukesh inflicted a jaily blow on his chest and the petitioner also inflicted a jaily blow on the neck of Rajesh. The other accused persons also caused injuries on the person of deceased with jaily, spade, danda and lathis. When the complainant tried to save his brother, co-accused Rakesh hit him with jaily on his left ankle and Sunder hit him with the handle of spade. On raising an alarm, Rohit son of Rajesh reached at the spot along with several other persons and thereafter, the accused persons ran away from the spot with their respective weapons. Injured Rajesh was taken to General Hospital, Bahadurgarh, where he was declared brought dead.

Learned senior counsel has submitted that in fact it is a case of version and cross-version and even the petitioner and his nephew Rakesh were attacked by complainant Krishan, his brother Rajesh and Rohit son of Rajesh, qua which a cross-version was registered on the statement of Rakesh. Learned senior counsel has referred to the statement of co-accused Rakesh, on the basis of which cross-version was registered, wherein it is stated that 12-13 days prior to the incident, there was a fight between two families on account of some wrong activities of daughter of Rajesh son of Kapur Singh, in which deceased Rajesh, his brother Krishan and Parmila started abusing him and threatened him. It was further stated that on 22.06.2017, when he was going towards Badli for a walk, Rajesh and his wife Parmila were coming on a motorcycle, they stopped the motorcycle and started abusing him and when they started fight, on hearing the noise, his uncle Ram Kumar (petitioner) came there. In the fight, Rohit gave a lathi blow on his head and Krishan gave a jaily blow on the face of petitioner Ram Kumar. Thereafter, Rakesh snatched the jaily of Krishan and hit the same on the neck of Rajesh and on receiving the injuries, Rajesh fell down.

It is thus submitted that even in the cross-version recorded by Rakesh, he has admitted that he caused injury on the neck of Krishan by using jaily, which proved to be fatal injury.

Learned senior counsel for the petitioner has further argued that as per the post-mortem report of deceased Rajesh, there are two penetrating injuries *below right angle of mandible*, which relate to the injuries inflicted by co-accused Rakesh with jaily. It is further argued that during the investigation, out of total 07 accused persons, 05 were found innocent and the challan was presented against the petitioner and co-accused Rakesh. It is further submitted that during the trial, statements of two witnesses have already been recorded. Complainant Krishan appeared as PW1 and reiterated the version given in the FIR, according to which Mukesh son of Ram Kunwar gave a straight jaily blow on the chest of his brother Rajesh. It is thus submitted that since co-accused Mukesh was found innocent by the police, when PW2 Parmila, widow of Rajesh, appeared and she attributed the same injury to the petitioner, by making improvements.

Learned senior counsel for the petitioner has submitted that the petitioner is in custody for the last 01 year and 10 months and examination-in-chief of these material two prosecution witnesses has already been recorded.

In reply, learned State counsel, on instructions from SI Dharamvir, has opposed the prayer for bail on the ground that the injuries attributed to co-accused Rakesh are co-related with injuries No.1 & 2, as described in the post-mortem report, however, it is not disputed that cross-version is also registered on the basis of statement of said co-accused Rakesh. It is submitted that the fact that both Rakesh and petitioner have received injuries (in cross-version), shows

that the petitioner has actively participated in the commission of offence.

After hearing learned counsel for the parties and considering the fact that the petitioner is in custody for the last 01 year and 10 months and also in view of the fact that in the cross-version, it is own case of co-accused Rakesh that he has caused fatal injuries to deceased Rajesh and also considering the fact that 05 co-accused were found innocent and one injury, which was attributed to Mukesh, as per version of the complainant PW1 Krishan, was later on attributed to the petitioner by PW2 Parmila, therefore, there is variation in the statements of these prosecution witnesses regarding role of the petitioner, I deem it appropriate to grant concession of regular bail to the petitioner.

Accordingly, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

[ARVIND SINGH SANGWAN]
JUDGE

28.03.2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No