

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

CRM-M No.19786 of 2019 (O&M)

Date of decision: 21.08.2019

Vikram @ Bablu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.P.S. Deol, Sr. Advocate
with Mr. H.S. Deol, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.335 dated 21.11.2017 registered under Sections 148, 149, 323, 307, 342, 506, 379-B of the Indian Penal Code, 1860 (in short 'IPC') (Sections 302 IPC added later vide DDR No.18 dated 27.11.2017) at Police Station Khol, District Rewari.

Learned Senior counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Rajender Parsad, on the night of 16.11.2017, his son namely Gautam (since deceased) was at home and received a phone call from the co-accused Sudesh. Gautam went to the house of his paternal uncle (Taya) Dalip Singh, where they used to keep fodder, etc. and found that the same is not locked. At that time, Aman son of Dharampal came from the

front side. Thereafter, Dharmender, the petitioner – Vikram @ Bablu, sons of Dharampal, Sudesh @ Billi wife of Aman, Rajbala wife of Dharmender and Poonam wife of Vikram (petitioner herein) armed with sticks, lathis, rods, axe, iron pipe, plastic pipe, were seeing coming there. On seeing them, his son – Gautam tried to run away but Aman caught hold of him and the accused persons started giving beatings to his son. Thereafter, they covered his face and took him inside the house and again gave him beatings. The accused persons, thereafter, called Kamal Singh, husband of the Sarpanch at the spot and he tried to save Gautam but they did not leave him. Upon this, Kamal Singh came to the house of the complainant and informed him that the accused persons are giving beatings to his son Gautam and they will kill him. When the complainant – Rajender Parsad along with his two sons namely Sunil @ Chotu and Govind @ Bunty reached at their house, the accused in their presence also caused injuries to his son – Gautam. The petitioner – Vikram gave 3-4 iron rod blows on his head. Aman gave danda blows on the fingers of the right hand and on his right and left feet, Dharmender gave axe blow on the left palm of Gautam, Rajbala gave iron pipe blow on the shoulder of Gautam, Poonam gave plastic pipe blow on the thigh, stomach and chest of Gautam. On this, the complainant and his sons tried to save Gautam from the accused persons but the accused persons did not leave Gautam till the police arrived at the spot and in the meantime, lot of blood oozed out and thereafter, Gautam was taken to Trauma Centre, Rewari for treatment and later died.

Learned senior counsel for the petitioner has further

submitted that initially FIR was registered under Sections 148, 149, 323, 307, 342, 506, 379-B IPC and later on, Section 302 IPC was added. It is further submitted that the petitioner is in custody for the last 01 year and 07 months and only 04 prosecution witnesses have been examined out of 32 PWs. It is also submitted that the incident is of 16.11.2017 and the complainant – Rajender Parsad gave a complaint on 20.11.2017 and has involved all the family members in the FIR.

Learned Senior counsel for the petitioner has further argued that in fact on the very next day of the incident, the co-accused Sudesh wife of Aman at whose house the incident has taken place had given a complaint to the Investigating Officer, Police Post Dahian vide Diary No.849-SD dated 17.11.2017 that Gautam in a drunken condition trespassed in her house at 10:00 PM on 16.11.2017 when she was alone, in order to outrage her modesty. When he was grappling with Sudesh, he over-powered her and tried to commit rape by extending threat to her life and in the meantime, her husband Aman reached there, on hearing the cries and both Aman and Sudesh caught hold of Gautam and gave him beatings. It is stated in the complaint that except them, no other person was there as all the 03 brothers namely Dharmender, Vikram and Aman, are married and are having separate residence at distant places.

Learned Senior counsel for the petitioner has further argued that the police during the investigation found Poonam wife of the petitioner – Vikram as innocent and she was kept in Column No.2 and during the trial, even the application filed under Section 319 Cr.P.C. to summon Poonam, was dismissed by the trial Court vide order

dated 11.01.2019 observing that since the complainant – Rajender Parsad is not an injured witness but his statement was recorded after 04 days of the incident i.e. on 20.11.2017 and even in the intervening period, the statement of Gautam and his other sons was not recorded.

Learned Senior counsel for the petitioner has also submitted that in fact Gautam in an inebriated condition entered the house of Sudesh with an intention to commit rape and Sudesh and her husband gave him beatings in exercise of their right of private defence as per Section 100 Clause (3) and (4) I.P.C. and therefore, it is yet to be decided during the trial, in what circumstances Gautam has entered the house of Sudesh at 10:00 PM in the absence of her husband, co-accused Aman. It is further argued that as per the prosecution version, the accused call PW2 – Kamal Singh, who is the husband of the present Sarpanch at the spot and thereafter, Kamal Singh went to the house of the complainant Rajender Parsad informing that the accused are causing injuries to his son Gautam and therefore, he is not an eye-witness.

Learned Senior counsel for the petitioner has referred to the statement of PW2 – Kamal Singh recorded in the Court wherein he has given the version of causing injuries to Gautam by the co-accused and with reference to the petitioner, it was stated that he was not present in the village at the time of the incident. This witness was declared hostile with regard to the presence of the petitioner – Vikram @ Bablu, Poonam and Rajbala. In cross-examination by the Public Prosecutor, PW2 – Kamal Singh, denied a suggestion that Vikram was also present at the spot.

Learned Senior counsel for the petitioner has also

submitted that as per the prosecution version when Kamal Singh came to the house of PW1 – Rajender Parsad, he along with his 02 sons namely Sunil @ Chotu and Govind @ Bunty went to the house of Aman and they saw the accused persons causing injuries to Gautam. It is further argued that in fact this witness has made improvements as his statement was made after 04 days and in fact as per the version given by PW2 – Kamal Singh, he got a phone call from the police about the occurrence and after the police arrived in the village, he accompanied them.

In reply, counsel for the State, on instructions from ASI Dinesh Kumar, has opposed the prayer for bail on the ground that since the deceased Gautam was in a critical condition and was admitted in the hospital, the complainant could not record his statement immediately and submit that at no point of time, the doctor had declared Gautam fit to make the statement. It is further submitted that 02 other eyewitnesses i.e. brother of deceased namely Sunil @ Chotu and Govind @ Bunty both sons of PW1 – Rajender Parsad, are yet to be examined in the Court and the allegations against the petitioner are that he caused injuries on the vital part of the deceased i.e. the skull and mere fact that PW2 Kamal Singh later on stated that the petitioner was not present in the village, is a fact to be appreciated at the time of final disposal of the case.

After hearing the counsel for the parties and considering the serious allegations against the petitioner, who is stated to have caused injury on the head of the deceased – Gautam and also in view of the fact that 02 of the eyewitnesses of the prosecution namely Sunil @

Chotu and Govind @ Bunty (brothers of the deceased – Gautam) are yet to be examined, I do not find it to be a fit case to grant the concession of regular bail, at this stage.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

21.08.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No