

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

CRM-M-30715-2019
Date of decision: 31.10.2019

Vikas

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R. S. Rai, Sr. Advocate with
Mr. Manish Soni, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Rajwant Singh Chahal, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 255 dated 09.06.2017, registered under Sections 302, 506 and 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Pataudi, District Gurugram.

Learned senior counsel for the petitioner has argued that as per the allegations in the FIR, which is registered at the instance of complainant Manju wife of deceased Yogesh, it is stated that the husband of the complainant was undergoing life imprisonment and he was released on parole. On 08.06.2017, she, along with her husband Yogesh, was going on a motorcycle when Ravi, Naveen, petitioner Vikas, Munna and Pardeep came and stopped them and told that they will take the revenge of the murder of

Rahul, brother of Ravi. On hearing this, the husband of the complainant started running as the motorcycle fell down and thereafter, he climbed over the roof of the house of one Om Parkash. As per the statement of complainant Manju, she also followed them and shouted for help and saw that co-accused Munna was firing upon her husband while chasing him and when she reached on the roof, she saw it from her own eyes that Pardeep and petitioner Vikas had caught hold of her husband and Ravi and Naveen, who were having axes in their hands, were causing injuries to her husband, whereas co-accused Munna by pointing a country made pistol on her temple threatened to kill her if she comes forward to save her husband. Thereafter, she became unconscious. The husband of the complainant was taken to hospital by Ajit Singh, where he was declared dead.

Learned senior counsel for the petitioner further submits that during investigation, the police found Ravi and Pardeep to be innocent, however, when the statement of the complainant was recorded as PW-3, they were summoned as additional accused on an application moved under Section 319 Cr.P.C. It is further submitted that both of them have been granted concession of anticipatory bail and are facing trial.

Learned senior counsel for the petitioner further argues that even co-accused Naveen has been granted regular bail by this Court, vide order dated 03.07.2019 passed in CRM-M-24355-2019 and another co-accused Gaurav has been granted regular bail by the trial Court.

Learned senior counsel for the petitioner further argues that complainant Manju, while appearing as PW-3, has reiterated the version given in the FIR that that Pardeep and petitioner Vikas had caught hold of her husband and Ravi and Naveen were causing injuries to her husband with

their respective axes and even in the postmortem report, injuries caused by the axes have been given as the cause of death of deceased Yogesh.

It is further submitted that the attribution to co-accused Gaurav that he was instigating the other accused to kill the complainant is an improvement on her part and it is not mentioned in the FIR.

However, learned State counsel, on instructions from the Investigating Officer, as well as learned senior counsel have opposed the grant of bail to the petitioner.

Learned senior counsel for the complainant submits that it was a case of revenge murder as the husband of the complainant was undergoing life imprisonment on account of committing murder of Rahul, who was the real brother of co-accused Ravi and, therefore, a motive is attributed in the FIR itself.

Learned senior counsel for the complainant further refers to aforesaid order dated 03.07.2019 to submit that it was observed by this Court that petitioner has given an axe blow on the head of Yogesh.

Learned senior counsel for the complainant further argues that the accused persons, who have been released on bail, are trying to influence the prosecution witnesses as PW-1 Jitender, in his cross-examination, has not identified the accused persons present in Court as the assailants, who have taken away his motorcycle on the date of incident, which was allegedly used to chase the deceased.

Learned State counsel has placed on record the affidavit of the SI/Investigating Officer, Crime Branch, Bilaspur, Gurugram, along with the statement of the prosecution witnesses recorded so far.

A perusal of the statement of PW-1 Jitender shows that he has

stated that few persons stopped his motorcycle and forcibly took it away and in this regard, he has lodged a complaint in the police station concerned. Though, in ordinary course, the public prosecutor was required to ask a specific question to this witness as to whether the accused persons present in Court are the same persons who have taken away his motorcycle, however, no such question was asked which shows negligence on his part but in cross-examination, the said question was specifically asked by the defence counsel, to which, this witness has denied that these are not the persons who have taken away his motorcycle.

In the statement of PW-3/complainant Manju, as noticed above, she has not attributed any injury to the petitioner and has stated that the petitioner, along with co-accused Pardeep, had caught hold of her husband.

It is also worth noticing that PW-4 Ajit Singh, in his statement, has stated that family members of deceased Rahul have eliminated Yogesh, however, he has not given any description of family members of Rahul except that Ravi is the real brother of Rahul and it is not stated that petitioner is one of the family members of Rahul and this fact is also missing in the statement of PW-3/complainant. Therefore, it is the moot point to be decided in trial if any motive is attributed to the petitioner.

The remaining witnesses are the official witnesses including the doctor who conducted the postmortem.

After hearing learned counsel for the parties and going through the entire evidence led so far, it is found that it is the consistent case of the complainant that Ravi and Naveen caused injuries to her husband with axes which they were having in their hands and co-accused Pardeep and Vikas had caught hold of him. It is also not disputed that during investigation,

Pardeep and Ravi were found innocent and were subsequently summoned under Section 319 Cr.P.C. and now they are on anticipatory bail. Further, it is also not disputed that Naveen and Gaurav have been released on bail, whereas co-accused Munna is in judicial custody.

Accordingly, in view of the submissions made by both learned senior counsel for the parties as well as learned State counsel and also in view of the fact that petitioner is in judicial custody since 19.06.2017, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

However, the observations made in this order are only for the purpose of deciding the present bail application and the same will have no bearing on the merits of the case.

31.10.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*