

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.-M-2512 of 2020 (O&M)
Date of Decision: December 16, 2020

Kuldeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Choudhary, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

MANOJ BAJAJ, J. (Oral)

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail, pending trial in case FIR No.283 dated 12.10.2018, under Sections 148, 149, 364, 323, 302, 120-B IPC and Section 61(1) Punjab Excise Act, 1914, registered at Police Station, Tohana, District Fatehabad. The petitioner is in custody since his arrest on 12.12.2018.

The above FIR was registered on the statement of complainant-Pawan Kumar, wherein it was alleged that on 11.10.2018 at about 10.00 p.m., he was going to his Village Smain along with Dilbag from his shop on a motor cycle and when at about 10.15 p.m., they reached near water tank, Vikram @ Vikka, Azad, Anmol @ Kaku and Annu came on a white colour car and they forcibly put him and Dilbag in the car. Vikka came on his bullet, whereas Azad had driven their motor cycle. Thereafter, they caused

injuries to both of them with dandas and gandasas. They left them as dead. Sonu and Sandeep got them admitted in the Government Hospital, Tohana, where they were medico-legally examined. As per prosecution, later on Dilbag and Pawan Kumar succumbed to the injuries suffered in the occurrence.

Learned counsel for the petitioner contends that as per the statement of victim Pawan Kumar, four accused persons, namely, Vikram @ Vikka, Azad, Anmol @ Kaku and Annu way laid him and his friend Dilbag and caused injuries upon them. He has submitted that the said victim stated that the assailants had attacked them as his brother Sumit had a fight with Kuldeep (petitioner) and because of that grudge, Kuldeep conspired with Azad and others and caused injuries upon the victims. He has further invited the attention of the Court to the list of witnesses filed by the police along with the final report and contended that Sumit is neither a witness nor his statement was ever recorded by the police. According to him, the indictment of the petitioner is founded on the basis of criminal conspiracy punishable under Section 120-B IPC, which lacks material evidence. He has prayed for grant of bail.

On the other hand, the prayer is opposed by the learned State counsel, who is assisted by ASI Surender Singh on the ground that the statement of Pawan Kumar amounts to dying-declaration and, therefore, as the name of the petitioner is mentioned by the said victim, therefore, he does not deserve the concession of regular bail. He has submitted that though as per statement of Pawan Kumar, the petitioner was not one of those assailants, who attacked, but motive was attributed to him. He further contends that the petitioner is involved in other cases of serious crimes. He,

on instructions, states that only five prosecution witnesses have been examined out of total thirty two witnesses and the brother of the victim, namely, Sumit is not a witness as per the list appended with the final report.

At this stage, learned counsel for the petitioner has argued that in most of the cases, the petitioner stands acquitted and the case set up by the prosecution is on a weak footing as compared to the other co-accused and the said part of the statement of Pawan Kumar may not be admissible for lack of evidence. He submits that the petitioner has already undergone a period of more than two years and, therefore, he be released on bail.

Considering the above background, custody of the petitioner and the fact that the trial will take long time to conclude in the wake of outbreak of pandemic COVID-19 in the region, this Court does not find any reason to decline the prayer. The petitioner is presently confined in judicial custody since 12.12.2018 and his further detention may not be necessary for any useful purpose.

Resultantly, without meaning any expression of opinion on the merits of the case, the petition is allowed and it is ordered that the petitioner be released on regular bail, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, Fatehabad.

December 16, 2020
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No