

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-27581 of 2020 (O&M)
Date of decision:04.11.2020

Krishan Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Satbir Singh Kanwar, Advocate
for the petitioner.

Mr. Rajiv Sidhu, Deputy Advocate General, Haryana.

Mr. Govind Chauhan, Advocate
for the complainant.

SUVIR SEHGAL, J.

The hearing of this petition has been taken up through video conferencing due to Covid-19 pandemic.

CRM No.26955 of 2020

Prayer in the application filed by the applicant-petitioner is for placing on record the copy of MLR of injured as Annexure A-1.

Application is allowed subject to all just exceptions. Annexure A-1 is taken on record.

CRM-M-27581 of 2020

Through the instant petition filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner is seeking regular bail in FIR No.61 dated 26.02.2020 registered under Sections 148, 149, 323, 324,

452 and 506 (Sections 325 and 307 of IPC, were added later on) of Indian Penal Code, 1860 at Police Station Butana, District Karnal.

As per the version of the prosecution, FIR was registered on the statement of Amrit Sharma, wherein, it was stated that he alongwith some relations went to his land on 25.02.2020 and he saw Krishan (present petitioner), Ramu and Ajay standing in his field and making a video. When they objected, an altercation took place. Krishan brought out a spade from his adjoining house and gave a blow on his lips while Ramu took out a wooden stick and hit him on his back. The complainant and his relations ran away from the spot. In a second attack, all the three accused alongwith Ramesh, Nanumal and his two sons Vikram and Vijay, came to the house of the complainant armed with wooden sticks, axe, sword and spade (*kasshi*) and attacked him and his family members. Krishan, Vikram and Vijay gave an axe blow on the head of his sister, who was nursing her one month old child. Ramesh gave a spade blow on hands and head of his father, Ramu and Ajay gave an axe blow on the eyebrow and teeth of the complainant after snatching the axe from Krishan. When the complainant and his family raised a hue and cry, the accused fled from the spot after giving out threats. The cause of enmity was a Court case which was pending between the parties regarding the plot of land.

Counsel for the petitioner has argued that there was a delay of 20 hours in lodging of the FIR. He submits that complainant took the accused to a private hospital for treatment so that the Medical Legal Report could be procured and on the basis of such procured Report, offences under

Sections 325 and 307 IPC were added 15 days after the occurrence. Counsel has further made a reference to GD request No.23 lodged on 26.02.2020 (Annexure P-1) to submit that Ramesh, one of the accused, had lodged a cross-case against the complainant. He submits that the petitioner is in custody since 02.06.2020 and as the trial is impeded due to outbreak of the Pandemic, the petitioner deserves to be enlarged on bail. He has placed reliance on the order dated 03.07.2020 (Annexure P-3) passed by a Coordinate Bench of this Court in CRM-M-15838 of 2020 and CRM-M-15858 of 2020, whereby co-accused Ramu and Vijay Kumar have been granted the concession of regular bail.

Opposing the petition, State counsel, upon instructions from ASI Subhash Chand, has submitted that petitioner is the main accused, who had caused grievous injuries, not only to the complainant but also to his family members. He has further submitted that antecedents of the petitioner also do not warrant granting bail to him as the petitioner was convicted under Section 323 of IPC in FIR No.140 dated 25.05.2006 and was released on probation. As per his instructions, the challan was filed on 07.05.2020 and the trial is underway. Counsel appearing for the complainant has assisted the State counsel during the course of arguments.

I have considered the rival submissions of the parties.

The alleged delay of 20 hours in lodging FIR stands duly explained for the reason that one of the family members, a lady, had been hit on the head with axe, as a result of which, her skull had broken. She was in need of immediate medical attention. It has come on the record that initially,

she remained admitted in the hospital for a period of 11 days and then was again re-admitted for 09 days. In such a situation, it was natural for the complainant and his family members to attend to the injured, rather than approach the police and lodge the FIR. Still further, from the nature of the injury inflicted upon the lady, Gagan, the doctors have opined that injury is life-threatening, as a result of which, Section 307 of IPC was also added. To contend that the medical opinion is procured, would be casting a doubt on the opinion of the doctor which this Court will not go into at this stage.

Though the co-accused, Ramesh has lodged a cross-case (Annexure P-1) but perusal thereof shows that the same was probably registered as an after thought. The date and timing of lodging of the report by the accused is crucial. The cross-case is lodged on 26.02.2020 at 19.07 hours whereas FIR by the complainant was registered on 26.02.2020 at 13.19 hours and was prior in time. There is no explanation given in the so-called cross-case about the delay in lodging the same as the alleged incident took place on 25.02.2020.

A perusal of the order dated 03.07.2020 (Annexure P-3) passed by a Co-ordinate Bench of this Court, whereby regular bail was granted to the two co-accused, shows that case of the petitioner is not at par with the co-accused, Ramu and Vijay Kumar. The allegations against the petitioner are much more serious in nature. Counsel has not been able to explain the reasons for the unprovoked second attack on the family members of the complainant, who were unarmed and one of them, a lady, who was nursing a baby was hit on the head with an axe. Still further, it deserves to be noticed

that even while granting regular bail, vide order dated 03.07.2020 (Annexure P-3), this Court has directed the said co-accused to deposit Rs.50,000/- each with the Duty Magistrate/Trial Court and the said amount was ordered to be disbursed to the injured Gagan towards her medical expenses.

Even the period of incarceration of the petitioner, which by now barely 05 months, does not justify his release as the statement of the material witnesses is yet to be recorded by the trial Court.

Keeping in view the totality of the facts and circumstances noticed above, this Court is of the view that the petitioner is not entitled to the concession of bail pending trial at this stage.

The petition is, accordingly, dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

November 04, 2020
pardeep nautiyal/savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes