

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

CRM-M-29920-2020

Date of Decision : November 26, 2020

Vikram		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.
(through video conferencing).

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 335 dated 20.11.2017 under Sections 148, 149, 302, 323, 325, 342, 379-B, 506, 307 IPC, registered at Police Station Khol, District Rewari, as the earlier one, i.e. CRM-M-19786-2019 was dismissed on 21.8.2019 with the following observations :-

“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 coaccused 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.”

Counsel for the petitioner submits that the petitioner is in custody for the last more than 03 years and the trial is still at the stage of recording of the prosecution evidence and out of 32 witnesses, only 11 have been examined.

It is further submitted that out of the two accused, i.e. the brother of the petitioner, namely Dharminder has been granted the concession of regular bail on 13.8.2029 in CRM-M-21729-2020 and

Aman was granted the concession of regular bail by the trial Court.

Counsel for the petitioner has argued that in view of the fact PW2 Kamal Singh has denied a suggestion given by the Public Prosecutor that the petitioner was present at the spot, it will be debatable issue whether he was present at the spot or not. Counsel for the petitioner further argued that since the eye-witnesses have already been examined, there is no possibility of tampering with the prosecution evidence as the official witness remains to be examined.

Learned State counsel has filed the affidavit of the DSP, Headquarters, District Rewari and submits that the deceased was given 29 injuries by the accused persons, however, it is not disputed that only 11 witnesses have been examined so far.

After hearing counsel for the parties; considering the submissions made by counsel for the petitioner; the petitioner is in custody for the last more than 03 years and the trial is moving at a very slow pace due to COVID-19 situation and 02 of the co-accused have been granted the concession of regular bail after the first bail application of the petitioner was dismissed, I deem it appropriate to grant regular bail to the petitioner. Accordingly, the petition is allowed and the petitioner is directed to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

November 26, 2020
satish

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