

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

CRM-M-29617-2020 (O&M)

Date of Decision:- 29.9.2020

Asrudeen @ Nasrudeen @ Asif

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kulvir Narwal, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.186 dated 10.9.2019 under Sections 302/323/506/34 IPC at Police Station Bahadurgarh, District Jhajjar.
2. The FIR in question was lodged at the instance of Sikander wherein it has been alleged that he is working as a Labourer and that his brother-in-law Manoj who also resides with him at Kundli and was looking for work went to meet Nirranjan on 8.9.2019. It is alleged that on the said day i.e. on 8.9.2019 Manoj had a fight with Naseem, Asif (petitioner) and Ashraf in the Steel factory where Naseem gave a blow with a pipe on head of Manoj while Asif and Ashraf gave kicks and fist blows to Manoj. The said facts are stated to have been disclosed to complainant by Nirranjan. It is further the

case of prosecution that although the aforesaid Manoj was taken to hospital but he succumbed to his injuries.

3. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case, as would be evident from the rather inconsistent versions of the complainant and Niranjana as regards nature of weapon allegedly used and also from the medical evidence which does not support the case of the prosecution at all. It has been submitted that the complainant Sikander is not an eye-witness since as per the FIR itself, the information regarding the incident had been furnished to him by his brother-in-law Niranjana. The learned counsel for the petitioner has further submitted that although as per the FIR, the fatal blow had been inflicted by co-accused Naseem with an '*iron rod*' but in the statement of Niranjana recorded under Section 161 Cr.P.C. the blow had been given with a '*wooden plank*'.
4. The learned counsel for the petitioner, while referring to medical record dated 9.9.2019 (Annexure P-2) has submitted that when the deceased was taken to hospital by the aforesaid Niranjana, who had witnessed the incident, he furnished information to the effect that the deceased had received injury on account of fall. The learned counsel has further submitted that in the postmortem report (Annexure P-4), although the cause of death has been opined to be a head injury sustained by the deceased and the consequent complications but it is specifically recorded therein in the '*death summary*' that the deceased Manoj was under influence of alcohol and had fallen on ground. The learned counsel for the petitioner has, thus, submitted that apparently it is a case where the deceased was under influence of alcohol and had died as a result of fall but now the accused are being framed falsely.

5. It has also been submitted that even if prosecution version is accepted to be true, it would, at best attract an offence under Section 304 IPC and too against co-accused Naseem who had given the blow with '*wooden plank*' to deceased.
6. Opposing the petition, the learned State counsel has submitted that since the petitioner is specifically named in the FIR and the cause of death had been opined to be head injury, no case for grant of bail is made out. The learned State counsel has, however, informed that the petitioner has been behind bars since the last one year and is not involved in any other case.
7. I have considered rival submissions addressed before this Court.
8. A perusal of the FIR would indicate that the fatal injury is attributed to the co-accused Naseem who as per the FIR was armed with an '*iron rod*' but as per the statement of Niranjana (eye-witness) recorded subsequently, was armed with a '*wooden plank*'. The '*wooden plank*' was sent for chemical examination but as per the report of FSL, the same was not found to be blood stained. Further, Niranjana (eye-witness), who had taken deceased to hospital, disclosed the history of the case being an injury caused due to fall, which is in absolute contrast to his statement recorded under Section 161 Cr.P.C.
9. Keeping in view the aforestated facts, especially that the petitioner is only alleged to have given fist and kick blows and that there is some doubt as regards the manner in which the death had taken place and while also noticing that the petitioner is in custody for the last about one year and is not involved in any other case, his further detention will not serve any useful purpose.

10.The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

11.It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

29.9.2020

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No