

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

105

CRM-M-31490-2020 (O&M)

Date of decision: 11.12.2020

Rahul @ Rahul Adiwai

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

Mr. Gurvinder Singh Sidhu, Advocate
for the complainant.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (second) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.315 dated 23.05.2020 registered under Sections 323, 324, 326, 188 read with Section 34 of the Indian Penal Code, 1860 in Police Station City Sirsa, District Sirsa.

The present FIR was registered on statement of complainant Ramu who alleged that on the intervening night of 22/23.05.2020 at about 01:30 A.M., when he was sleeping in front of shop No.17, under the shed of Additional Mandi and his brother Vicky was sleeping inside shop No.19 and his brother Anil was sleeping outside shop No.19, a white coloured car stopped in front of shop No.19 out of which four occupants alighted while having swords in

their hands and they all started giving sword blows on the hands as well as neck of his brother Anil who raised noise which attracted the complainant and his brother Vicky who saw Aman Pahalwan and Rahul Adiwai (petitioner) along with two other unknown persons giving sword blows to their brother Anil. When they challenged, all the assailants fled from the spot with their respective weapons.

The petitioner was arrested in the case on 06.05.2020. First petition for grant of regular bail filed by the petitioner was dismissed vide order dated 07.08.2020 passed by this Court. The petitioner has filed the present second petition for grant of regular bail on the ground of change in the circumstances.

The petition has been opposed by the learned State Counsel in terms of reply filed by Deputy Superintendent of Police, HQ Sirsa and additional reply filed by Superintendent of Police, Sirsa and by learned Counsel for the complainant in terms of reply.

I have heard learned Senior Counsel for the petitioner, learned State Counsel and learned Counsel for the complainant and have gone through the relevant record.

Learned Counsel for the petitioner has submitted that co-accused Sandeep and Ravi Kumar have been granted anticipatory bail by the Coordinate Bench of this Court vide order dated 29.09.2020 passed in CRM-M-16008-2020 and CRM-M-17895-2020. During hearing of the above-said petitions, the Investigating Officer has stated that grievous injury caused with sharp edged weapon was attributed to co-accused Aman. Challan (report under Section 173(2) of the Cr.P.C.) has also been filed. As per the prosecution version emerging during

investigation, grievous injury caused with sharp edged weapon is not attributed to the petitioner. Charges are yet to be framed and the trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State Counsel has argued that the petitioner along with his co-accused caused injuries to Anil with Sword. In view of the nature of accusation and gravity of the offences committed by the petitioner, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Learned Counsel for the complainant has submitted that grievous injury caused with sharp edged weapon is attributed to either the petitioner-Rahul or co-accused Sandeep. The petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

In the present case who caused grievous injury with sharp edged weapon on the left arm of injured-Anil is a disputed question as the Investigating Officer on the basis of statement of injured-Anil recorded by him stated that the same was attributed to co-accused Aman but the complainant and injured-Anil are attributing the same to either the petitioner or co-accused Sandeep. Co-accused Sandeep and Ravi Kumar have been granted anticipatory bail by Coordinate Bench vide order dated 29.09.2020 passed in CRM-M-16008-2020 and CRM-M-17895-2020 on the ground that grievous injury caused to injured-Anil with sharp edged weapon was attributed to co-accused Aman.

Keeping in view the facts and circumstance of the case, nature of accusation against the petitioner, the fact that the case involves disputed question as to author of the grievous injury caused with sharp edged weapon to injured-Anil Kumar, period of custody of the petitioner, change in the circumstances due to filing of challan, grant of anticipatory bail to co-accused Sandeep and Ravi Kumar by the Coordinate Bench and also the fact that the trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19, but without commenting on the merits of the case, I am inclined to extend the concession of regular bail to the petitioners.

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, it may be observed here that in the present case the Investigating Officer did not obtain copy of CCTV coverage of the occurrence in the camera installed in the vicinity of the place of occurrence with requisite certificate under Section 65B of the Evidence Act, 1872. Although, as mentioned in the additional reply filed by way of affidavit of Superintendent of Police, Sirsa, departmental action has been initiated against the Investigating Officer but taking of departmental action in one or more of such cases does not remedy the damage caused to the cause of justice and steps are required to be taken to ensure that such lapses do not occur again and again. Therefore, Director General of Police, Haryana is directed to issue appropriate instructions to the Commissioners/Senior

Superintendents/Superintendents of Police in the State of Haryana to exercise effective supervision on the police officials posted in their respective district through appropriate means to ensure that in every case where any CCTV footage is claimed to be available, copies of the same are obtained from the source along with requisite certificate under Section 65B of the Indian Evidence Act, 1872 in accordance with law and in case of any omission to do so to direct registration of case under Section 166-A of the IPC against the defaulting Investigating Officer.

A copy of this order be supplied to learned State Counsel and be also sent to the Director General of Police, Haryana for ensuring requisite compliance of this order.

Compliance report be sent to this Court along with a copy of the instructions so issued within one month from receipt of a copy of the order.

11.12.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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