

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-35450-2020 (O&M)****Date of Decision: 10.12.2020**

Mithlesh @ Bhalu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILLPresent: Mr. Keshav Pratap Singh, Advocate,
for the petitioner.Mr. Ramesh Kumar Ambavta, AAG, Haryana,
assisted by ASI Devinder.*(proceedings conducted through video conferencing)***GURVINDER SINGH GILL, J. (Oral)**

1. The petitioner has filed this petition seeking grant of regular bail in a case registered against him vide FIR No.341 dated 22.07.2019 at Police Station SGM Nagar, Faridabad, District Faridabad under Sections 302, 34, 323 IPC.
2. The FIR in question was lodged at the instance of Ajay Singh wherein it is alleged that on 21.7.2019 when he was going alongwith his brother Lakhmi on a motorcycle, one pick-up truck came from the opposite side and the driver of the said pick-up truck started abusing the complainant while stating '*saale dekh ke nahi chalayi jati*' upon which arguments ensued amongst the two occupants of the pick-up truck and the complainant and his brother and they entered into a scuffle. It is alleged that shortly thereafter the said occupants of the pick-up truck called two more persons

telephonically, who also came to be spot and gave kicks and fists blows to them. One of them is alleged to have given several injuries to complainant's brother with a 'stick' or a rod type of weapon on the left eye, stomach and ribs, as a result of which complainant's brother lost his life.

3. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case on the basis of a disclosure statement allegedly made by a co-accused Mithun Bhadana, who is the main accused and had caused injuries with a 'stick' on the head of the deceased as has been admitted in his disclosure statement. The learned counsel has further submitted that even the medical evidence does not support the case of the prosecution inasmuch as PW-3 Dr. Bishanwati, who has been examined during the course of trial and who was a part of Board of Doctors which conducted postmortem on the dead body of Lakhmi, categorically stated to the following effect.

“...It is correct that the patient Lakhmi died because of his chronic pre-existing disease and not by any external injury. This can only happen in severe injuries or when the person was suffering from pre-existing chronic disease. Possibility cannot be ruled out, but in this case there were no external mark of injury, swelling, redness or any other injury. The possibility of receiving of severe injury in this case is very remote. Again said there is no possibility of severe injury in this case.”

4. The learned counsel has, thus, submitted that the petitioner, who has been behind bars since the last more than 1 year and 5 months, deserves concession of bail.
5. Opposing the petition, the learned State counsel has submitted that since the name of the petitioner has been disclosed by his co-accused Mithun Bhadana from whom a 'stick' and pick-up truck have been recovered, the complicity of the petitioner is clearly evident. The learned State counsel has, however, informed upon instructions from ASI Devinder that as on date the petitioner has been behind bars since the last more than 1 year and 5 months and that till date only 8 out of 26 prosecution witnesses have been examined. It has also been informed that the petitioner is not involved in any other case.
6. Having regard to the facts and circumstances of the case, especially the medical evidence, it would be debatable as to whether it would be a case falling within the ambit of Section 302 IPC or as to whether it would be an offence under Section 304 IPC. In any case, since the petitioner is not stated to be a previous convict and has been behind bars since the last 1 year and 5 months and conclusion of trial is likely to consume more time, further detention of the petitioner will not serve any useful purpose. 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.

7. It is, however, made clear that none of the observations made above shall be taken to be expression on merits of the main case as the same has been made for the limited purpose of disposing of the bail application.

(GURVINDER SINGH GILL)
JUDGE

10.12.2020

Vimal

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