

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34884-2019 (O&M)

Date of decision: 17.01.2020

Rakesh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Advocate for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of regular bail in FIR No.318 dated 22.06.2017 under Sections 148, 149, 302, 341 IPC (report under Section 173 Cr.P.C. was presented under Sections 302, 323, 325, 341, 34 IPC), registered at Police Station Sadar Bahadurgarh, District Jhajjar.

Brief facts of the case, as per allegations in the FIR, registered at the instance of complainant Krishan, are that he is resident of Village Soldha, Tehsil Bahadurgarh, District Jhajjar. They were two brothers and Rajesh (since deceased) was his elder brother. They were residing separately along with their respective families. On 22.06.2017, his brother Rajesh along with his wife Parmila had gone to their fields to bring fodder on the motorcycle. He had also gone to the fields for walking and at about 06.30 am, while he

was coming back and reached about half acre away from the office of Sonu Chairman, his brother Rajesh and his wife Parmila passed him on their motorcycle and when they reached in front of office of Sonu Chairman, petitioner Rakesh along with co-accused Ram Kumar, Mukesh son of Ram Kumar, Jai Karan son of Sher Singh, Sunder son of Azad Singh, Suman wife of Jai Karan and Sukhbiri wife of Ram Kumar, all residents of Village Soldha, who were sitting behind the office, while concealing their presence, pelted stones on his brother Rajesh, due to which he and his wife Parmila fell down along with motorcycle and then petitioner Rakesh gave a jaily blow on the neck of his brother Rajesh. Thereafter, Mukesh son of Ram Kumar gave a jaily blow on the chest of his brother Rajesh and co-accused Ram Kumar also gave a jaily blow straight in the neck of his brother Rajesh on the right side and Jai Karan son of Sher Singh, Sunder son of Azad Singh, Suman wife of Jai Karan and Sukhbiri wife of Ram Kumar, who were armed with jaily, spade, danda and lathi, also started giving beatings to him. Complainant Krishan rushed to the spot to save his brother Rajesh and tried to save him but petitioner Rakesh gave a jaily blow on his left ankle, whereas Sunder son of Azad Singh gave many blows with handle of spade to his brother Rajesh and when he along with his sister-in-law Parmila raised the alarm, upon which his nephew Rohit son of Rajesh reached at the spot and on seeing several persons coming towards the place of occurrence, the accused persons fled away from the spot along with their respective weapons. He shifted his brother Rajesh to General Hospital, Bahadurgarh, where he was declared brought dead. On this statement, a formal FIR under Sections 148, 149, 302, 341 of IPC was registered. During the investigation, petitioner Rakesh and co-accused Ram

Kumar were arrested on 27.06.2017 and in pursuance of their disclosure statements, the police recovered the jailies used in the commission of offence from the place of their concealment. In this case, the offences under Sections 148 and 149 IPC were deleted and later on, the offences under Sections 323 and 325 IPC were added along with Sections 302 and 341 IPC. During investigation, the police found Mukesh son of Ram Kumar, Jai Karan son of Sher Singh, Sunder son of Azad, Suman wife of Jai Karan and Sukhbiri wife of Ram Kumar innocent. After completion of investigation, challan was presented before the trial Court.

Learned senior counsel for the petitioner has argued that the material independent witnesses, including the complainant and the injured witnesses stand examined and they have not supported the prosecution version. Learned senior counsel has referred to the statement of PW1 Krishan-complainant, who, in examination-in-chief, has specifically stated that petitioner Rakesh son of Jai Karan was having a jailly in his hands and gave a blow on the left side of neck of his brother (deceased Rajesh) in presence of PW Mukesh and PW Parmila, wife of deceased Rajesh, however, examination-in-chief of this witness was deferred and thereafter, when he was recalled for further examination-in-chief, he stated that he has seen accused persons Ram Kumar and Rakesh through video conferencing and they are not the persons, who caused injuries to deceased Rajesh and his wife Parmila. This witness was declared hostile and was confronted with his statements Ex.PW1/A and Ex.PW1/C, wherein it was recorded that his brother (deceased Rajesh) sustained injuries at the hands of petitioner Rakesh.

Learned senior counsel for the petitioner has further referred to

the statement of PW2 Parmila, widow of Rajesh, who, in examination-in-chief, has also stated that Rakesh inflicted injuries with jailly, which he was holding in his hands, on the left side of neck of her husband. She even identified petitioner Rakesh and co-accused Ram Kumar, who were present in the Court. The cross-examination of this witness was deferred and when this witness appeared for cross-examination again, she deposed that co-accused Ram Kumar and petitioner Rakesh are not the persons, who caused injuries to her husband. Upon re-examination by the Public Prosecutor, this witness admitted her statement Ex.PW2/A and also admitted that it bears her signatures on both the pages. PW2 Parmila also stated that she has not given statement Ex.PW2/A under any pressure. She also admitted that her husband sustained injuries through a jailly and died on that account.

Learned senior counsel has relied upon the order dated 28.03.2019 passed in CRM-M-13003-2019, vide which this Court had granted the concession of regular bail to co-accused Ram Kumar.

A perusal of this order shows that learned senior counsel, who represented co-accused Ram Kumar as well, had stated that as per allegations in the FIR, the injuries are attributed to the present petitioner Rakesh.

Learned senior counsel has further argued that in fact, a cross-version case was proposed to be filed on behalf of the petitioner and an application in this regard was moved. It is also submitted that even petitioner Rakesh has also suffered injuries in the incident. Learned senior counsel has relied upon the order dated 11.07.2019 passed by the trial Court, vide which the said application was dismissed as withdrawn. Learned senior counsel has fairly conceded that in the said application, it was stated that petitioner

Rakesh and his uncle Ram Kumar were attacked by deceased Rajesh and his associates and as a result of which, petitioner and his uncle Ram Kumar had sustained grievous injuries, as per MLRs No.481 & 480 issued by the Civil Hospital, Bahadurgarh. It is further argued that now all the important witnesses have been examined and the petitioner is in custody for the last more than two years and six months and therefore, he is entitled for grant of regular bail.

In reply, learned State counsel, on instructions from SI Davinder Singh and on the basis of affidavit dated 16.11.2019 of the Investigating Officer ASI Satyavir Singh, Police Station Sadar, Bahadurgarh, District Jhajjar as well as another affidavit dated 30.10.2019 filed by Deputy Superintendent of Police, Badli, District Jhajjar, has opposed the prayer for bail. It is submitted that the incident was witnessed by PW Krishan and PW Parmila and there are direct allegations against the petitioner that with a jailly, he has caused injuries on the neck of deceased Rajesh, who died subsequently.

Learned State counsel has further submitted that the incident is admitted by the petitioner, as at one point of time, an application was moved seeking permission of the Court to file a cross-version case, in which it was specifically stated that petitioner Rakesh and co-accused Ram Kumar had also sustained injuries in the said incident. It is further argued that though in the examination-in-chief, both PW1 Krishan and PW2 Parmila has specifically named the petitioner as the main accused and PW2 Parmila had even identified both the accused persons in the Court, however, later on, in the cross-examination, she tried to resile from the examination-in-chief, but in

the further cross-examination by the Public Prosecutor, she admitted her statement made before the Court levelling allegations against the petitioner.

Learned State counsel has next argued that case of the petitioner is on different footings that of co-accused Ram Kumar, who was granted the concession of regular bail by this Court vide order dated 28.03.2019, as the petitioner is attributed the fatal injury to deceased Rajesh.

After hearing learned counsel for the parties, I find no ground to grant the concession of regular bail, considering the serious allegations against the petitioner, which are duly supported by the complainant as well as eye-witness/injured, while deposing in examination-in-chief, though in the cross-examination, they were declared hostile, but on further cross-examination by the Public Prosecutor, PW2 Parmila admitted the prosecution version and even identified the petitioner as the main accused.

Mere fact that the petitioner is in long custody, is no ground to grant him the concession of regular bail, considering the gravity of offence.

In view of the above, present petition is dismissed.

Nothing observed in this order will have any bearing on merits of the case, as it is for deciding this bail application only.

[ARVIND SINGH SANGWAN]
JUDGE

17.01.2020
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No