

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

CRM-M-38850-2019 (O&M)

Date of decision: 20.07.2020

Navdeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. D. S. Saini, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. Vivek Sheoran, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 312 dated 27.07.2016, registered under Section 148, 149, 302, 323, 452, 506 and 120-B of the IPC at Police Station Narnaud, District Hisar. The first petition bearing CRM-M-38181-2018 was dismissed as withdrawn on 15.07.2019.

Learned counsel for the petitioner submits that petitioner is in judicial custody for the last more than three years and nine months and relies upon order dated 01.05.2019 passed in CRM-M Nos. 37549 & 26164 of 2017, vide which co-accused Surender and Khazan Singh have been granted concession of regular bail by this Court.

Learned counsel for the petitioner further relies upon order dated 15.07.2019, vide which another co-accused, namely Virender, has

been granted concession of regular bail by this Court. The operative part of the order reads as under:

“Counsel for the petitioner has submitted that the petitioner is not maintaining good health and he is in custody since 04.08.2016. Counsel for the petitioner has relied upon the medical report submitted by way of an affidavit of the Superintendent, Central Jail – I, Hisar, in which the following opinion has been given:-

“This is certified that as per the medical record available at Central Jail-1, Hisar. Above said prisoner Virender s/o Khajan Singh (55 Yrs – Male) is follow up case of Pain at Inguinal region, Scrotum and Abdomen on & off for which he has been sending to G.H. Hisar for follow up regularly. He was adviced USG Inguino-Scrotal region and USG Impression was No typcal Pathology seen in both Inguinal region on dated 06 April 2019. Treatment was given by concerned expert at G.H. Hisar. He is hemodynamically stable at present.”

Counsel for the petitioner has further submitted that as per the allegations in the FIR, the petitioner along with 20 other co-accused had caused fatal injuries to deceased Baljit and Dalbir. Counsel for the petitioner has referred to the FIR to argue that no specific injury is attributed to the petitioner and subsequently, when the statement of the injured/eye-witness under Section 161 Cr.P.C. was recorded, even then no specific injury is attributed to the petitioner. Counsel for the petitioner has also relied upon the statement of PW3, to support his argument. It is further submitted that this witness has specifically stated that the incident has taken place due to the enmity regarding the election of Sarpanch as the complainant party did not cast their vote in favour of one

Joginder. It is also submitted that the petitioner is not related to said Joginder and as per this witness, the petitioner is residing next door to the house of the complainant and in the light of the cross-examination of PW3, wherein he has stated that even on a previous occasion, the case is pending against the family of Khajan i.e. the father of the petitioner for causing injuries to the witnesses in the present case, and therefore, the defence of false implication is there. It is further argued that out of 29 prosecution witnesses, only 04 PWs have been examined and after recording the examination-in-chief of the PW-4, the application was moved by the prosecution under Section 319 Cr.P.C. for summoning some additional accused, which was partly allowed and one accused was summoned and both the sides have filed the revision petitions challenging the said order.

Counsel for the petitioner has also relied upon the statement of PW4 – Sunita, who has stated that Joginder is the main conspirator behind this incident and therefore, the involvement of the petitioner is yet to be decided on the basis of the entire evidence.

Counsel for the State, on instructions from ASI Surjit Singh, assisted by counsel for the complainant has not disputed the factual position as per statement of PW-3 and PW-4 and affidavit of Medical Officer but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for a period of about 03 years; he is not maintaining good health as per the report of the Medical Officer as stated by the Superintendent, Central Jail – I, Hisar by way of filing an affidavit and also in view of the fact that no recovery of any weapon was effected from the

petitioner and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate on the following conditions:-

- (i) He will appear before the trial Court on each and every date and the trial Court will not entertain any application for exemption and in such eventuality, the regular bail granted to the petitioner shall stand cancelled automatically.
- (ii) He will not try to influence any of the prosecution witness and will not enter the village, where the complainant/witnesses are residing and it will be open for the prosecution to move an application in case the petitioners are found misusing the concession of regular bail.”

Learned counsel for the petitioner further submits that as per the allegations in the FIR, though the petitioner was named as a member of unlawful assembly, however, nothing is attributed towards him and even in the statements of prosecution witnesses including eye-witness, no specific injury is attributed to petitioner.

Learned counsel further submits that now an application has been filed by the prosecution under Section 319 Cr.P.C. in which five persons have been summoned as additional accused and the said summoning order has been challenged before this Court, whereby the operation of the said order has been stayed by this Court.

Learned counsel further submits that now a retrial is to be

conducted in view of the addition of five new witnesses and, therefore, it will take some time in conclusion of the trial as the same is subject to the final outcome of the petition filed before this Court under Section 482 Cr.P.C. challenging the said summoning order.

Learned counsel for the petitioner refers to the allegations in the FIR to submit that there is no specific injury attributed to the petitioner.

Learned State counsel, on telephonic instructions from SI Nawal Singh, assisted by learned counsel for the complainant, has opposed the grant of bail to the petitioner.

Learned counsel for the complainant submits that co-accused Khazan Singh and Surender were granted bail as they were not named in the FIR and Khazan Singh was aged about 68 years and while grant bail to co-accused Virender, it was observed that as per the Medical Officer, Central Jail, Hisar, he was not maintaining good health and his custody was more than three years and no weapon was recovered from him, whereas the petitioner 26 years of age and a Gandassi was recovered from him.

On a Court query, learned State counsel and learned counsel for the complainant could not dispute that no overt act is attributed to the petitioner for causing injury to any person. It is also not disputed that in the statement of PW-3 Sunita, wife of the deceased, who is also an eye-witness, no overt act is attributed to the petitioner.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last more than three years and nine months; the trial is still at the initial stage in view of the fact that some additional accused have been summoned under Section 319

Cr.P.C. and the operation of the said summoning order has been stayed by this Court as noticed above and also in view of the fact that no specific attribution is made to the petitioner either in FIR or in the statement of PW-3 and PW-4; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned on the following conditions:

- (i) He will appear before the trial Court on each and every date and the trial Court will not entertain any application for exemption and in such eventuality, the regular bail granted to the petitioner shall stand cancelled automatically.
- (ii) He will not enter the village, where the complainant/witnesses are residing.
- (iii) The petitioner will not try to influence any witness and if he is found misusing the concession of bail, it will be open for the prosecution to move an application for cancellation of bail.

Criminal miscellaneous application, if any, shall also stand disposed of.

20.07.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No