

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

**CRM-M-53622 of 2019
Date of Decision:-25.02.2020**

Parveen @ Binna

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. B.S. Rana, Sr. Advocate with
Mr. A.K. Sehrawat, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Sanjeev Kadian, Advocate
for the complainant.

JASGURPREET SINGH PURI J.(Oral)

Petitioner-Parveen @ Binna has filed the present petition under Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR No.450 dated 07.7.2018, under Sections 148, 149, 307, 323, 406 and 120-B IPC and Sections 25, 54 of the Arms Act, 1959, registered at Police Station Gharaunda, District Karnal.

Learned senior counsel for the petitioner, assisted by Mr. A.K. Sehrawat, Advocate has submitted that the present case was a cross version of FIR No.450 dated 07.7.2018, which was lodged against the petitioner and the other co-accused on the ground that at the time when the

demarcation was to take place in the village, a quarrel took place, which ultimately converted into a serious fight and injuries were attributed upon both the parties including the injuries from the gun shot. He has further submitted that so far as the present petitioner is concerned, he was not present at the spot and has been wrongly roped in the FIR. He has further submitted that in the present case main accused Hawa Singh, who was father of the petitioner had fired and he had admitted so in his statement. He has further submitted that although the FIR was registered against the present petitioner and the other co-accused but it was a case of cross version and at their instance the police did not register any FIR because the police was favouring the complainant party. He has further submitted that compelled by the fact that the police did not register the FIR, a private complaint was filed before the Court, which is still pending before the Court of Judicial Magistrate 1st Class. Learned senior counsel has further submitted that the petitioner is in custody since 11.7.2018 and the matter has been delayed because number of applications under Section 319 Cr.P.C. were filed by the prosecution and thereafter the charges have also been re-framed and the trial has now started. He has specifically stated that the complainant in the present case was earlier examined but due to allowing of the application under Section 319 Cr.P.C., fresh charges were framed and the trial has started denovo. Learned senior counsel has specifically stated that there is no other case against the petitioner and the present case was only a case of cross version. He has also relied upon an order dated 05.12.2019 (Annexure P-2) passed by this Court in CRM-M-50791-2019, wherein the co-accused Pawan, who is similarly situated, was admitted to

bail.

Per contra learned State counsel, on instructions from ASI Dharambir states that in the present case the custody period of the petitioner is not disputed and it is also correct that the trial in this case has now started and earlier the complainant was examined by the learned trial Court but thereafter when applications under Section 319 Cr.P.C. were allowed, a denovo trial has started and the complainant is again to be examined. Learned State counsel states that he is not in a position to state that whether the petitioner is involved in any other case or not as he does not have any instructions in this regard. So far as the bail granted to other co-accused, namely, Pawan, the allegations qua him are identical with that of petitioner.

Learned counsel appearing for the complainant has argued that in the present case the matter is serious in nature and he has vehemently opposed the grant of bail. He has further stated that there are other cases against the petitioner but he is not in a position to give the details of those cases as he has not having instructions with that regard. He has further submitted that although a private complaint was lodged in a cross case by the petitioner party but charges in that case have not been framed as it is at pre summoning stage and thereafter according to learned counsel for the complainant it cannot be considered as a cross case. Learned counsel has further submitted that since the injuries, caused to the injured, namely, Bhupinder, are serious because there is partial loss of eye-sight, the petitioner does not deserve the concession of bail. So far as the custody period of the petitioner is concerned, learned counsel for the complainant does not dispute the same.

I have heard learned counsel for the parties and perused the records.

In the present case, apparently it appears that it is a cross version whereby both the parties had gone to the spot at the time of demarcation and a fight took place between two groups. Perusal of the FIR would show that a fight took place between the parties and not only Gandasi and Dandas were used but firearm was also involved in the present case. Learned senior counsel for the petitioner has relied upon the order dated 05.12.2019 (Annexure P-2) passed by co-ordinate Bench of this Court in CRM-M-50791-2019, whereby co-accused Pawan, who was identically situated, was granted concession of bail, in which one of the ground that the father of the petitioner, namely, Hawa Singh, who is also a co-accused in the FIR, had rather stated that he had fired because a fight took place at the time when demarcation took place. So far as the custody period of the petitioner is concerned, all the parties have not disputed the same and so far as the stage of the trial is concerned, as per the submission of learned State counsel, the complainant had been examined earlier but since now the trial is to take place denovo, the entire prosecution evidence would start again. It is not a case of the State that in case the petitioner is released on bail, then there is likelihood of tempering of any record or influencing of any witnesses but the bail is being opposed by learned counsel for the State as well as learned counsel for the complainant on the ground that the matter is being serious in nature.

So far as the grant of bail to the co-accused is concerned, the order is already available in the file as Annexure P-2, and it seems that co-

accused Pawan, who had been granted bail was similar situated person as of petitioner. Apart from that, from the facts it can be deduced that it was a case of cross version but the police did not register the case against the complainant party, and therefore the petitioner and his party had filed an appropriate complaint before the learned Magistrate, which is still pending. Apart from the above, learned senior counsel for the petitioner has specifically stated that many injuries were even caused to brother of petitioner, namely, Pawan Singh and father of the petitioner, namely, Hawa Singh.

Therefore, considering the totality of circumstances in the present case wherein the petitioner is in custody since 11.7.2018 and the trial would take sufficient time, especially in view of the fact that after applications under Section 319 Cr.P.C. were decided, a denovo trial has started, this Court deems it fit to admit the petitioner on regular bail. Consequently, the present petition is allowed. It is ordered that the petitioner shall be released on regular bail on his furnishing bail bond/surety to the satisfaction of the learned trial Court.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

February 25, 2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No