

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

105

**CRM-M-53912-2019
Date of decision: 29.09.2020**

Hari Parkash

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Nupur Choudhary, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

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 short, "the Cr.P.C.") for grant of regular bail in case FIR No.519 dated 13.11.2018 registered under Sections 323, 302 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Pehowa, District Kurukshetra.

Briefly stated, as per the prosecution version on 06.11.2018 Mohan Lal Sharma submitted written complaint to Incharge, Police Post Pehowa. In the written complaint, Mohan Lal Sharma alleged that when his nephew Jitender Kumar was present in Saraswati Bazar in connection with religious ceremonies as per his profession, accused Hari Parkash (the petitioner) was having quarrel with Chinu. His nephew Jitender Kumar intervened in the matter and

pacified them. After some time, Hari Parkash armed with poker arrived with one unknown person and attacked Chinu and Jitender Kumar and inflicted blow with the poker in abdomen of Jitender Kumar. Thereafter, Hari Parkash fled from the spot while threatening to kill his nephew Jitender Kumar. On the basis of the complaint the above said FIR was registered. The police investigated the case and on completion of investigation on finding evidence to be sufficient against Hari Parkash filed charge-sheet against him.

The petitioner, who is in custody since his arrest on 18.11.2018, has filed the present second petition for grant of regular bail. His first petition for grant of regular bail was dismissed as withdrawn vide order dated 06.11.2019.

The petition has been opposed by learned State counsel in terms of status report filed by way of affidavit of Superintendent of Police, Kurukshetra.

Learned State counsel has also filed custody certificate of the petitioner through e-mail print out of which is taken on record.

I have heard learned counsel for the petitioner and learned State counsel and gone through the relevant record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The alleged occurrence took place on 06.11.2018 but the FIR was registered on 13.11.2018 with undue, unreasonable and unexplained delay. There is no cogent evidence as to commission of alleged offence by the petitioner. PW-8 Mohan Lal Sharma was not eye witness to the occurrence as admitted by him in his cross-examination while PW-9

Mohit Kumar and PW-12 Gaurav @ Chinu did not support the case of the prosecution as to commission of the alleged offences by the petitioner. The injury allegedly inflicted by the petitioner in the abdomen of the deceased was found to be simple. The deceased died due to intervening cause of multiple surgeries and subsequent infection. Offence under Section 302 of the IPC is not made out against the petitioner. As per FSL report, kurta and poker allegedly recovered from the petitioner were not found to have any blood stains. As per FSL report alleged signature of the deceased on the alleged complaint found to be attached in the police file did not match with the signatures of the deceased. The trial is likely to take long time due to restrictions imposed to prevent the 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 had inflicted the injury which was the cause of death of Jitender Kumar. In view of gravity of nature of accusation and gravity of the offences alleged, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

In the present case it is not disputed that in his cross-examination PW-8 Mohan Lal Sharma has admitted that he did not witness the occurrence and that PW-9 Mohit Kumar and PW-12 Gaurav @ Chinu have not supported the case of the prosecution as to commission of the alleged offences by the petitioner. There is no positive finding in the FSL report that alleged signature of the deceased on written complaint found attached in the police file tallied with

signature of the deceased and the same records inability to express any opinion in this regard.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner and the fact that the disposal of the case is likely to take long time due to restrictions imposed to prevent the 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 petitioner.

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.

Before parting with the case, it may be observed here that this Court vide order dated 12.03.2020 directed the Superintendent of Police, Kurukshetra to inquire into the matter and take appropriate action against the defaulting official and to submit report to this Court. The inquiry is said to be still pending. The Superintendent of Police, Kurukshetra is directed to expedite the inquiry and to submit report before this Court and the same be put up by the Registry on judicial side as and when received.

29.09.2020

Vinay

**(ARUN KUMAR TYAGI)
JUDGE**

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