

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 08, 2021

1. CRM-M-1612-2021

Davinder Singh @ Kaku

...Petitioner

Versus

The State of Haryana

...Respondent

2. CRM-M-23470-2021

Sukhnam

...Petitioner

Versus

The State of Haryana

...Respondent

3. CRM-M-23475-2021

Navdeep

...Petitioner

Versus

The State of Haryana

...Respondent

4. CRM-M-21773-2021

Kashmiri Lal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr.Gurdarshan S.Sidhu, Advocate,
for the petitioner in CRM-M-1612-2021.

Ms.Anamika Mehra, Advocate,
for the petitioners in CRM-M-23470-2021 &
CRM-M-23475-2021.

Mr.Paramjit Singh Jammu, Advocate,

for the petitioner in CRM-M-21773-2021

Mr.Sukhdeep Parmar, DAG, Haryana.

Mr.Bijender Singh Dhankar, Advocate,
for the complainant.

MANOJ BAJAJ, J. (Oral)

Petitioners have filed these separate petitions under Section 439 Cr.P.C. for grant of regular bail, pending trial in case FIR No.236 dated 09.07.2020, under Sections 148, 149, 323, 364, 302 and 120-B IPC, 1860, registered at Police Station, Sadar Dabwali, District Sirsa, who are in custody since their arrest in July, 2020.

The contents of the FIR, as noticed by the Additional Sessions Judge, Sirsa in his order dated 18.12.2020 while dismissing the regular bail of accused Davinder Singh @ Kaku, are as under:-

“It is case of prosecution that on 09.07.2020 on receipt of a medical ruqa from MHC, P.S. Sadar Dabwali at Police Post, Chautala through telephone regarding death of Monu son of Balwinder Singh due to injuries received in assault, police officials reached at CHC, Dabwali, where Satwinder Singh alias Sonu son of Balwinder Singh was found present near Mortuary of CHC, Dabwali. Complainant Satwinder Singh got recorded his statement to police. The complainant alleged that his younger brother Jitender alias Monu had performed love marriage with Seema of village Sukera Khera about two years ago. He had received information regarding receiving of injuries by his brother Jitender alias Monu in assault. On this information, he (complainant) reached CHC, Dabwali and came to know that his brother Jitender alias Monu and his friend Arun alias Hunny were taking meal at Punjabi Dhaba near village Abubshahar where Bandagi Ram son of Mulkh Raj, Goru son of Sukha Ram, Kala Ram son of Pala Ram and

Budhu along with 18/19 other persons came on motor-cycles and started inflicting injuries to Jitender alias Monu and Arun alias Hunny with Kirpans, swords and batons. Arun alias Hunny managed to flee away from spot. The assailants took Jitender alias Monu on motor-cycle to village Sukera Khera where they caused injuries to Jitender alias Monu in front of house of Bandagi Ram. Thereafter, all the assailants ran away from spot along with their respective weapons. On the information of villagers, ambulance came at spot and took Jitender alias Monu to CHC, Dabwali where he was declared dead by doctor. The complainant stated that his brother has been murdered by Bandgi Ram, Goru son of Sukha Ram, Kala Ram son of Pala Ram, Budhu and 18/19 unknown persons with sword, danda etc.”

Learned counsel for the petitioners have argued that in the FIR, complainant Satwinder Singh alias Sonu had named only four accused persons, namely, Bandagi Ram, Goru, Kala Ram and Budhu, who caused injuries upon his brother Jitender alias Monu (deceased) along with 18/19 accomplices and as per allegations, in the said occurrence, victim Arun @ Honey also suffered injuries, however, he was not medico legally examined. They have submitted that the petitioners have been falsely implicated in this case and there is no cogent evidence to indicate their involvement in the alleged crime, particularly when the statement of eye-witness Arun recorded under Section 161 Cr.P.C. also does not contain their names. It is pointed out that the petitioners have been indicted as accused only on the basis of disclosure statement made by the co-accused. According to them, after framing of charges on 18.01.2021, no prosecution witness has been examined, therefore, the further custody of the petitioners may not be necessary. They have prayed for regular bail.

On the other hand, prayer is opposed by the learned State

counsel, assisted by SI Devi Lal, as well as the learned counsel for complainant on the ground that it was because of fear of accused persons, eye-witness Arun did not get himself medically examined. They have produced the statement of Arun recorded Section 161 Cr.P.C., which was recorded on 09.07.2020, i.e., the date of occurrence. Concededly, the names of the petitioners are not contained in the said statement and it is also not disputed that after framing of charges, no prosecution witness has been examined.

Learned State counsel is unable to explain as to why the medical examination of Arun was not got conducted, if, actually he had also suffered injuries in the said occurrence.

At this stage, learned counsel for the petitioners have pointed out that the initial version given by complainant as well as Arun is based upon hear-say material, therefore, at least qua the petitioners the case of the prosecution is distinguishable from rest of the accused, who have been either named in the FIR or in the statement of eye witness Arun, and presently are in custody.

After hearing the learned counsel for the parties, considering the custodial period of the petitioners and the fact that despite framing of charges, the trial is yet to commence as no prosecution witness has been examined so far, this court is of the opinion that the conclusion of trial is likely to consume considerable time. Apart from it, the material witnesses are either the complainant/injured or the police officials and at present, there does not seem to be any possibility of their being won over. Thus, the further custody of the petitioners may not be necessary for any useful purpose.

Resultantly, without meaning any expression of opinion on the merits of the case, the petition is allowed and it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate, Sirsa.

November 08, 2021
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No