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

CRM-M No.1635 of 2020

Date of Decision:04.08.2021

KAMALJEET BHOOMLA

.....Petitioner

Vs

STATE OF UT CHANDIGARH

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr.H.S Brar Sr, Advocate with
Mr. Sumit Pal Singh Sidhu, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, APP UT Chandigarh.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video-conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0240 dated 21.05.2018, registered under Sections 302 and 34 IPC at Police Station Manimajra, District Chandigarh.

The FIR was lodged at the instance of Sukhbir Singh with the allegations that on 21.05.2018 he was returning home from his work at about 11:00 PM. Petitioner was standing with his associates near the house of the complainant. He called elder brother of the complainant namely Baldev @ Kala to have

a talk with him. Elder brother of the complainant went to talk with the petitioner and his associates. Two days ago there was an altercation between the brother of the complainant on the one hand and petitioner and Gaurav @ Kalu on the other hand. In view of this, the complainant went to look after his brother with an apprehension in his mind that there may not be any untoward incident. In the meanwhile, Gaurav @ Kalu came from Gurudwara side on a motorcycle. Petitioner caught hold of the complainant by his waist. Other boys kept the brother of the complainant distracted in conversation. Gaurav @ Kalu came down from his motorcycle and exhorted others not to spare brother of the complainant in view of, altercation already taken place. Brother of the complainant was stabbed by knife in his right side of chest. On raising alarm all the assailants fled away from the spot. In the vernacular version of the FIR this fact has been specifically pleaded that "KAMAL NE MEREKO KAMAR SE PAKAD LIYA". As per prosecution case, arising out of FIR and the narration given in challan, the petitioner caught hold of the complainant by his waist and co-accused Gaurav @ Kalu inflicted stabbed injury in the chest of the brother of the complainant. Petitioner has taken an open stand that no injury has been attributed to him. The complainant while appearing as PW7 has taken a U-turn thereby alleging that the petitioner had caught hold of the deceased. The prosecution has also relied

upon CCTV footages of the House No.480/1 of the locality which would falsify the stand of the complainant that the petitioner had caught hold of the deceased, rather the petitioner helped the deceased and he went along with mother and brother of the deceased to the hospital in an ambulance from Civil Hospital, Manimajra to PGI. Complainant and one eye-witness have been examined. Now the complainant has pleaded while appearing as PW7 that the petitioner had caught hold of the deceased.

Learned State counsel has laid emphasis upon the statement recorded by IO, even before lodging the FIR, wherein the complainant stated that the petitioner had caught hold of the deceased. The FIR was registered with typed subject matter which shows that the petitioner had only caught hold of the complainant and others kept on distracting the brother of the complainant and in the meanwhile co-accused Gaurav @ Kalu came down from his motorcycle and exhorted that Baldev Singh be taught a lesson. Thereafter, he inflicted stab injury in his chest. The Police has also produced Police file. Perusal of the Police file (more particularly the first page of challan under Section 173 CrPC) would show that the version of the FIR has been retyped, wherein it has been alleged that the petitioner had caught hold of the complainant.

According to learned State counsel the version is copy-paste of the FIR. I have compared the hindi typed version of the FIR and first page of the challan. Both the writings are distinct in nature. At this stage, it cannot be appreciated that the challan is cut and paste photocopy of the FIR in vernacular. Petitioner is in custody since 24.05.2018. Out of total 21 prosecution witnesses only 12 witnesses have been examined and 4 witnesses have been given up. Last prosecution witness was examined on 19.02.2020. There is no progress thereafter, in the prosecution evidence. The stand taken by the State that the initial statement recorded by IO in his own handwriting is also a part of challan, would be gone into by the trial Court at an appropriate stage.

In view of changed stand taken by the complainant, the petitioner has a right to lead defence evidence. At this stage, without meaning anything on the merits of the case I deem, it appropriate to consider the custody of the petitioner since 24.05.2018 to be a sufficient custody for grant of regular bail, leaving the parties to lead their evidence during trial in accordance with law.

Looking to the aforesaid facts and in view of the situation arising out due to COVID-19 pandemic , I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

04.08.2021	(RAJ MOHAN SINGH)
Amandeep	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No