

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

CRM-M-12067-2021

Date of Decision: 08.04.2021

Gagan Gaba

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr. Gaurav Gupta, Advocate,
for the petitioner.

Mr. M.K. Taya, AAG Haryana.
(presence marked through video conferencing)

ARUN MONGA, J. (ORAL)

1. Through this bail application, petitioner is seeking regular bail in FIR No. 211 dated 21.05.2019,, registered under Sections 148, 149, 323, 341, 506, 302 and 216 of IPC at Police Station Kurukshetra University, District Kurukshetra.

2. Per FIR allegations, on 20.05.2019, Aditya Sharma (complainant) along with his friend Anish Bansal (since deceased) had gone to take examination in Pharmacy Department, Kurukshetra University, from 9.30 AM to 12.30 PM. After that both of them left on a motorcycle of Anish Bansal bearing registration No. HR-07-X-6065, the complainant was a pillion while his friend was riding it. As they came out of the department, Khushal, a fellow student stopped the motorcycle. He also gave lalkara that complainant and his friend be caught and taught a lesson. Accused Khushal

Ajrawar, Mukesh Saini, Nitesh Chahal, Yamuna Nagar, Mayank Safidon and other 3/4 boys armed with dands, bindas and rods. All of them gave banda blows and fist blows to them. Anish Bansal suffered serious injuries which resulted in his death. Per FIR, the role attributed to the petitioner was of having inflicted binda blow on the arm and head of the deceased. The petitioner was arrested on 26.06.2019 and since then he is in custody.

3. Learned counsel for the petitioner refers to the testimony of complainant Aditya Sharma (PW14). He submits that said prosecution witness has not supported the prosecution case. On the contrary, he has shown hostility to the prosecution version. The complainant has neither identified the accused herein as an assailant nor attributed any overt act to him.

4. He further submits that the petitioner is entitled to be released on regular bail on the ground of parity as well. Similarly situated co-accused Gurdeep in CRM-M-41396 of 2020 has already been accorded the benefit of bail, contends the learned counsel for the petitioner. He argues that the only difference between the petitioner and co-accused already enlarged on bail is that co-accused was not named in the FIR, whereas petitioner herein was though named by the complainant(fellow student) at the time of registration of the FIR. However, as noticed above, he has not supported the prosecution version contained in the FIR. The complainant has specifically stated that petitioner is not the person who had given blow on the arm and head of deceased Anish Bansal and in fact it was one Kushal Singh, who had inflicted the fatal injury.

5. As regards presence of the petitioner at the spot of occurrence, learned counsel for petitioner submits that the same is also not supported by the version given by the testimony of the father of the deceased student, in as

much as, to a specific question he answered that he had received a telephonic information about the presence of the petitioner from the complainant Aditya Sharma. While on the other hand testimony of Aditya Sharma does not overtly attribute presence of petitioner at the scene of occurrence, other than the general allegations that all the accused were part of unlawful assembly.

6. Learned counsel for the petitioner further submits that based on the testimony of the material witness, it is a fit case for acquittal. However, the same shall have to await the outcome of trial and at this stage petitioner deserves to be accorded the benefit of bail. Any further incarceration will permanently scar the future prospects of the petitioner, who is merely 21 years old and is on the cross roads of his life and has been involved in the FIR merely on the hearsay.

7. Learned counsel further submits that petitioner has got no criminal antecedents and has been embroiled in the present FIR on account of his friendship with certain people belonging to rival groups in the University.

8. Per contra, learned State counsel opposes the bail plea. According to her, the petitioner is involved in the murder of a fellow student and deserves no indulgence. However, she admits that the petitioner is not involved in any other case.

9. I have heard the rival contentions of the respective learned counsels.

10. The case in hand seems to be a brawl amongst the young students, turned ugly with unanticipated consequences much to the shock of all involved. Perhaps a few youth gone astray during an unlawful assembly.

11. Be that as it may, the same is for the trial Court to adjudicate, based upon the evidence to be adduced.

12. Even though the trial is going on, but its pace is slowed down due to the pandemic. Same is not likely to conclude anytime soon. On the other hand, petitioner is on the cross roads of his life and his entire career is at stake. Any further preventive custody, would severely jeopardize his future prospects.

13. Considering the overall scenario, I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody. In the premise, without commenting on the merits of the case, the instant petition is allowed.

14. The petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

15. It is, however, made clear that anything observed in the instant order is only for the purpose of bail and shall not be construed, in any manner, as an expression on the merits of the case. The trial Court to proceed without being influenced by the same.

(ARUN MONGA)
JUDGE

08.04.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No