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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.13333 of 2021 (O&M)
Decided on: 13.12.2021

Sahil @ Sukhwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kamal Kumar Yogi, Advocate (Legal Aid Counsel)
with Ms. Bhupinder Kaur, Advocate
for Mr. G.S. Bajwa, Advocate
for the petitioner.

Mr. Ramdeep P. Singh, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.102 dated 04.05.2019, for offence punishable under Sections 302, 148, 149 of the Indian Penal Code (in short 'IPC') (Sections 341, 201 IPC added subsequently) registered at Police Station City Kapurthala, District Kapurthala.

Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Raj Kumar, on 03.05.2019 he along with his son namely Shivam (since deceased) was going on a motorcycle, driven by Shivam Sharma and when they reached near Bhagat Singh Chowk, Kapurthala, Sagar and Gung both sons of Vijay, holding datar in their hands, Jodha @ Beera and Baba, who were having sharp edged weapon and Pinka @ Batra and Jindu

Nai, also holding sharp edged weapons on motorcycle and scooter along with 2-3 unknown persons came and attacked Shivam. Sagar gave one blow with datar on the head of Shivam, Jodha armed with datar also gave a blow on the head of Shivam and Gung also gave datar blow, which hit on the right hand of Shivam and Jindu gave datar blow to Shivam, which hit on his right hand. Thereafter, Shivam fell down and in the meantime, Harpreet and Baba came at the spot and Baba gave one datar blow to Shivam, which hit on his left foot and apart from them, the other persons also caused injuries to Shivam with their respective weapons. Thereafter, as per the prosecution version, Shivam was taken to hospital where he died during the treatment.

Counsel for the petitioner has argued that the petitioner was not named in the FIR and it has come in the police investigation that 03 supplementary statements of the complainant Raj Kumar was recorded, however, the name of the petitioner did not surface in those 03 supplementary statement and rather the name of the petitioner came in the disclosure statement of co-accused Komalpreet. It is further submitted that the petitioner is not involved in any other case and he is in custody for the last about 02 years and 03 months and out of 40 PWs, only 02 PWs have been examined so far.

Counsel for the petitioner has lastly argued that since the statement of the complainant and the sole eye-witness has been recorded, there is no possibility for the petitioner to tamper with the prosecution evidence as the remaining witnesses are the official witnesses.

Reply by way of affidavit of the SHO, Police Station City

Kapurthala, District Kapurthala, is on record and as per the reply, after giving the details of the FIR version, it is stated that in the supplementary statement, the name of the additional accused was also recorded and the aforesaid Komalpreet @ Kaku was named by the complainant – Raj Kumar, in his supplementary statement dated 04.05.2019 along with Deepak, Aman @ Endless and Vinod @ Pawa. It is further submitted that as per the post-mortem of the deceased, there were 09 injuries, out of which 03 injuries were on the vital part of the body i.e. head and cause of death was opined as coma due to compression of brain and haemorrhagic shock as a result of injuries No.1, 2 and 3 (i.e. on head) which are sufficient to cause death in the ordinary course of nature.

Counsel for the State has further submitted that all the aforesaid 03 injuries, as per the FIR version and as per the statement of Raj Kumar, who appeared as PW-2 are attributed to Sagar, who gave the first blow, Jodha, who gave the second blow and Komalpreet, who gave the third blow on the head of deceased – Shivam whereas the other accused Gung gave the datar blow on the head of deceased and Vinod @ Pawa gave datar blow on the right hand and Baba gave datar blow on the left foot. It is further submitted that in the FIR as well as in the statement of PW-2 Raj Kumar has only stated that the other accused have given injuries with their respective weapons whereas 03 injuries which were reported in the post-mortem are sufficient to cause death i.e. 03 head injuries attributed to aforesaid co-accused namely Sagar, Jodha and Komalpreet.

Counsel for the State, on a Court query has argued that out

of 40 PWs, only 02 PWs including PW-1, the doctor who conducted the post-mortem and PW-2 Raj Kumar, the complainant, has already been recorded.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is not involved in any other case; challan stands presented and also in view of the role attributed to the petitioner and the fact that conclusion of the trial is likely to take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

13.12.2021
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No