

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

CRM-M-14819-2021(O&M)

Date of decision:-27.4.2021

Brij Mohan

...Petitioner

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Satpal Dhamija, Advocate and
Mr.Abhikant Duraja, Advocate
for the petitioner.

Mr.Karan Garg, AAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner Brij Mohan, aged about 22 years, resident of House No.210, Gali No.5, Shakti Park, Khandsa Road, Gurugram, Haryana, an accused in FIR No.42 dated 11.01.2020, under Section 148, 149, 302, 323, 506 IPC, registered at Police Station Shivaji Nagar, Gurugram.

Briefly stated, the facts of the case as per the prosecution story are that criminal machinery in this case was set into motion by Prabhu Dayal S/o Malaram, R/o Street No.2, Near Bata Showroom, Amar Colony, Gurugram, who in the written complaint submitted by him to the police stated that Dinesh S/o Naresh Kumar had beaten up his brother

Sharwan several times and had threatened him with dire consequences; on 10.01.2020 at about 08:00 PM Dinesh along with his friends Rohit, Parveen, Rajesh, Ankit, Lalla, Brij Mohan (present petitioner), Monu and 4-5 other unknown persons while armed with iron rods, pipes and *dandas* came to their house; Rukmani, sister of the complainant informed the accused that Sharwan was not at home, then they started giving beatings to Rukmani; Rohit gave an iron pipe blow to Rukmani on her face, as a result of which she became unconscious and fell down; thereafter, Dinesh and Rajesh hit the complainant with *dandas*; the other persons accompanying such accused assaulted the complainant and his sister; in the meanwhile, Sharwan reached there at which the accused assailants left the spot. Rukmani was taken to the hospital, where she was declared brought dead.

On the basis of such written complaint, formal FIR in the matter was registered and investigation in the case started. Accused Parveen, Rajesh, Gaurav and Rohit were arrested, whereas Dinesh had absconded and was declared a proclaimed offender vide order dated 08.10.2020. Dinesh S/o Naresh Kumar, Ankit S/o Ram Naresh and Iqbal alias Lalla S/o Shamshad Ahmad, who were arrested in another case, were made to join investigation in this case. Despite, various raids being conducted by the police, Brij Mohan, present petitioner and Vipin alias Lucky could not be arrested.

Apprehending his arrest, the petitioner had approached the Court of Sessions at Gurugram by moving an application for pre-arrest bail, which was assigned to Additional Sessions Judge, Gurugram,

however, his application was dismissed by the said Court vide order dated 25.02.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the records.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

The petitioner comes out to be an absconder, who is avoiding joining the investigation. He is specifically named in the FIR and there are serious allegations against him being one of the assailants who had attacked the deceased and the complainant. An innocent girl namely Rukmani had lost her life, succumbing to the injuries suffered by her at the hands of petitioner/accused and his co-accused.

Section 148 IPC deals with offence of rioting, armed with deadly weapons, providing that whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Whereas 149 IPC clearly provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly

knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Here the petitioner/accused comes out to be member of unlawful assembly comprising him and his co-accused numbering more than five. He is said to have been carrying a weapon at that time. The very fact that all the accused had arrived at the spot together and taken part in the incident, thereafter leaving the spot at the same time goes to show that they had a common object and they had attacked Rukmani deceased and the complainant in pursuance of that common object. It being so, all the assailants are equally liable for the offence under Section 302 IPC, though the injuries resulting in death of Rukmani might have been caused by some other co-accused. The petitioner cannot come up with a plea that role of every assailant including him be severed into parts and seen separately. The incident is to be viewed in entirety. Thus the seriousness and gravity of allegations against the petitioner do not warrant grant of relief of pre-arrest bail to him.

The custodial interrogation of the petitioner is necessary for complete and effective investigation and to effect the recovery of the weapon used in the incident and to find out as to how the incident was planned and executed; the role played by each one accused; from where the weapons were procured and where they were left or destroyed after the incident and the motive for the incident etc. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation

being carried out adversely, which is not called for.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Therefore, the petition is doomed for failure and is dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

27.4.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No