

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-40165-2020 (O&M)
Date of Decision:- 6.4.2021

Banti

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sanjay Vashisth, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana,
assisted by ASI Vijay Pal.

Ms. Sukhveer Kaur, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in respect of a case registered vide FIR No.78, dated 1.4.2019, Police Station Dadri City, District Charkhi Dadri, under Sections 302, 34 IPC.
2. The FIR in question was lodged at the instance of Sunil Kumar wherein it is alleged that he is having a spare parts shop at Mahindergarh bypass and that even his brother Anil (deceased) is also having another shop nearby. It is alleged that on 29.3.2019 while he was sitting at his shop, he heard noises of a scuffle coming from the side of his brother's shop and upon hearing the same, he

rushed to the spot where he saw that Banti (petitioner) was having one interlocking cement brick in his hand and was causing injuries to his brother Anil and that another 3-4 persons were also giving beatings to him. It is alleged that Banti gave a blow with brick on the backside of head of Anil and another blow on the right side of his face on account of which his brother fell down and blood started oozing and he became unconscious. The complainant has alleged therein that a few days back Banti had threatened his brother to kill him in case he did not remove his car from front of his shop. Although, injured Anil was taken to hospital but he succumbed to his injuries.

3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the instant case and that in any case even if the allegations as levelled in the FIR are taken to be correct it would at best be a case punishable under Section 304 IPC and not under Section 302 IPC. Learned counsel has further submitted that as on date all the material PWs including the complainant had been examined and that in fact three of the material PWs has resiled.
4. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that since the petitioner is specifically named in the FIR and is attributed fatal injuries, no case for grant of bail is made out. It has further been submitted that the most material witness in the instant case is the complainant himself who is the eye witness and who has fully supported the case of prosecution. Learned State counsel has however, informed that the

petitioner as on date has been behind bars since the last about 2 years and that as on date 8 out of 16 PWs has been examined.

5. I have considered rival submissions addressed before this Court.
6. Keeping in view the nature of injuries and the kind of weapon used for causing the injury i.e. a brick, it will certainly be debatable as to whether it is a case falling within the mischief of Section 302 IPC or 304 IPC. In any case, since the petitioner has been behind bars for a substantial period of 2 years and the material eye witness i.e. the complainant already stands examined, there would not be any apprehension of intimidating the complainant. Since only 8 out of 16 PWs have been examined so far, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

6.4.2021

mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No