

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(213)

CRM-M-5760-2022

Date of decision: - 17.02.2022

Vijay Kumar

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Naresh Kumar Ganga, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail in FIR No.135 dated 01.07.2020 registered under Sections 302, 201, 148, 149 IPC and Section 25 of Arms Act, 1959 at Police Station Ding, District Sirsa.

The case of the prosecution in brief is that the complainant Rajbeer had got his statement recorded to the effect that on 01.07.2020 said Rajbeer had gone to his brother Ramesh's house and had inquired about Anoop (deceased) whereupon, he was informed that said Anoop had gone to the water pond with the buffaloes and his brother Ramesh had said that he will take care of the buffaloes and he (complainant) must take care of Anoop. Complainant Rajbeer along with his brother Jaiveer went to the pond to take Anoop for agricultural work. When they reached around the main pond of the village, they heard Anoop shouting and both the brothers then ran towards him. They saw some persons that have been named in the FIR including Dholu son of Rajpal and one unnamed

person, beating up Anoop. Vijay son of Satbeer pulled out a knife and stabbed the deceased on left side of his ribs upon which, said Anoop fell down and then all the other accused persons inflicted kick blows upon the deceased. It was also stated that Sanjay had attacked Anoop with a *lathi* on his head and back and on the basis of the said allegations, the FIR was registered.

Learned counsel for the petitioner has submitted that in the present case, there are two alleged eye witnesses of the occurrence i.e. PW-1 Rajveer son of Jai Karan and PW-2 Jaiveer son of Jai Karan and both the witnesses have been examined and they have not supported the case of the prosecution. Reference has been made to the statement of PW-1 Rajbeer. The relevant portion of the said statement is reproduced hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @ Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced through video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for state requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

Reference has also been made to the statement of PW-2 Jaiveer. The relevant portion of the said statement is reproduced

hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @ Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced though video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for State requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

It has been argued that both the star witnesses have in fact stated that they had seen some persons with muffled faces who had inflicted injuries upon his nephew and the petitioners were not involved in the same. It is further submitted that nothing is to be recovered from the petitioner and the knife has been recovered from co-accused Sultan. The petitioner has been in custody since 01.07.2020 and there are 26 witnesses and out of them, only two material witnesses have been examined and thus, the trial is likely to take time, moreso, in view of the present Covid pandemic. It is also submitted that the petitioner is not involved in any other case.

Per contra, learned State counsel has opposed the petition for bail and has submitted that in the present case a heinous crime has been committed by the accused persons including the present petitioner. It is further submitted that it is the present petitioner, as per the FIR, who had

inflicted the knife injury upon the deceased and thus, he does not deserve the concession of regular bail.

This Court has heard the learned counsel for the parties and has perused the paper book.

In the present case, PW-1 Rajbeer and PW-2 Jaiveer, who were the star witnesses and the eye witnessess as per the prosecution version, have not supported the case of the prosecution and have in fact, not identified the petitioner as the person who might have caused injuries to the deceased Anoop. The petitioner has been in custody since 01.07.2020 and in the present case, there are 26 witnesses in all and the trial would take time inasmuch as, 24 witnesses are yet to be examined, moreso, in view of the Covid pandemic and the petitioner is stated to be not involved in any other cases and the two star witnesses have already been examined and thus, the present petition filed by the petitioner is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

February 17, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes