

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

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CRM-M-9133-2022

Date of Decision: 09.03.2022

Vivek @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. P.K.Ganga, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by SI Naresh Kumar.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.42 dated 16.07.2020 at Police Station GRP Hisar, District Hisar, under Sections 147/148/149/307 IPC (Sections 302 & 326 IPC added later on).
2. The FIR was lodged at the instance of Neeraj, wherein it is alleged that on 16.7.2020 at about 12.30 am (early morning) when he along with his brother Dharminder was returning back home after having attended a party, they saw that Kamal, Gaurav, Raman, Arjun, Jambo and 2-3 other persons who were armed with sharp edged weapons like sword, *gandasi* and knife were inflicting injuries to Shamsher and Pawan. When the complainant and his brother intervened, the said persons attacked them as well. The complainant managed to escape. Shortly thereafter the accused also ran away from the spot. Thereafter, when he returned back to the spot, some other persons had also gathered and he with the help of the

said persons got admitted Shamsher, Pawan and Dharinder in CMC Hospital, Hisar.

3. Learned counsel for the petitioner has submitted that he is nowhere named in the FIR and has been nominated as an accused on the basis of statements of Shamsher and Pawan, both injured, recorded in terms of Section 161 Cr.P.C. Learned counsel has further submitted that in any case even on the basis of said statements, the petitioner is not stated to have gone to the place of occurrence armed with any weapon and is alleged to have thrown brick bats and stones. It has been submitted that two other identical situated co-accused namely Sunny and Rajbir have been granted bail by this Court vide orders dated 12.11.2021 and 13.09.2021 (Annexures P-4 & P-5 respectively) and in these circumstances, the petitioner, who has been behind bars since the last more than 1 year also deserves the concession of bail on the grounds of parity. Learned counsel has further submitted that although the police claims that co-accused Sunny and Rajbir have also disclosed that the petitioner was accompanying them, but such like disclosure statements would not carry any evidentiary value.
4. Opposing the petition, learned State counsel has submitted that since both the injured as well as co-accused had specifically nominated the petitioner as accused, no case for grant of bail is made out. Learned State counsel has however, informed that the petitioner is behind bars for the last more than 1 year and that he is not involved in any other case.
5. I have considered rival submissions addressed before this Court.

6. It is not in dispute that the petitioner is nowhere named in the FIR. He had been nominated on the basis of statements of witnesses Pawan and Shamsher and also on the basis of disclosure statements of the co-accused, the admissibility of which would be debatable. Even as per the said disclosure statements, the petitioner is unarmed although general allegations have been levelled against him that he had also given beatings. The petitioner has been behind bars for a substantial period of more than 1 year and is stated to have a clean record. Identically situated co-accused have already been granted bail by this Court vide orders dated 12.11.2021 and 13.09.2021 (Annexures P-4 & P-5 respectively). In these circumstances, further detention of the petitioner will not serve any useful purpose as till date not even a single PW out of the cited 23 PWs has been examined. 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.

09.03.2022

Vimal

**(GURVINDER SINGH GILL)
JUDGE**

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