

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

220

CRM M-13939 of 2022 (O&M)

Date of Decision: July 18, 2022

Amit

...Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. VINOD S. BHARDWAJ

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

Mr. Kanwar Sanjeev Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This is 2nd petition filed on behalf of the petitioner under Section 439 of the Code of Criminal Procedure seeking concession of regular bail in case bearing FIR No. 95 dated 19.06.2020 under Sections 147, 148, 149, 323, 325, 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') (charged under Sections 147, 323, 325, 302 and 506 read with Section 149 IPC) registered at Police Station Bond Kalan, District Charkhi Dadri.

The allegations of prosecution are that the abovementioned case was registered against the petitioner-accused with the allegations that Balwant Singh, his sons, daughters-in-law and sons-in-law, Meena wife of Virender, Ajay and Rohit sons of Virender and Savitri wife of Bajrang residents of village Achina were raising forcible construction on the plot of complainant Vikram. On this, on 16.05.2020 at about 08.00 A.M. the complainant party went to

their plot for restraining the forcible construction by the accused-party and when they asked to stop the construction, all the said persons suddenly attacked the complainant party with 'Basoli', 'kulhari' and 'dandas'. In this occurrence, Krishan father, Surajbhan uncle, Ashish brother, Balbir uncle, Arun cousin and Chandro Devi mother of complainant received serious injuries. Due to receiving the injuries, they all fell down in the street. The assailants threatened to kill them if they restrained them from raising construction again. Thereafter, all the injured persons were shifted to General Hospital, Charkhi Dadri and from there, after giving first-aid, they were referred to PGI MS Rohtak. With the aforesaid allegations, initially aforesaid FIR under Sections 147, 148, 149, 323, 325 and 506 of IPC was lodged against the accused persons. However, later-on, on receiving the medical opinion regarding the nature of injuries on the person of injured persons and the post mortem report of the injured Surajbhan, the offence under Sections 307 and 302 IPC were added in this case.

Learned counsel appearing on behalf of the petitioner has argued that the instant case had been initially registered against twelve persons, who were nominated as accused and that after the investigation, four persons were found innocent and only eight persons were charge sheeted in the final report so filed. Out of the above eight persons, four have already been granted the concession of pre-arrest bail under Section 438 Cr.P.C., while the other three co-accused have been granted the concession of regular bail. He

contends that the incident in question is stated to have taken place on 16.05.2020 in relation to the construction that was being carried out by the petitioner at the plot which was in their ownership and possession. He further contends that the complainant-victims as per their own version had come over to the plot in order to restrain the petitioner from raising construction over the said plot and as such they were the aggressors in the present case. It is further urged that the petitioner was not armed and that even as per the best case of the Investigating Agency, an injury was caused by the use of 'Basoli' which was lying at the spot for being used in the construction to be raised. He contends that after the incident of 16.05.2020, the deceased Surajbhan who was a man aged 72 years was discharged from Pandit Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, Rohtak on 19.05.2022. The condition of the patient was stable and he was well oriented. He points out that as per the medical summary, the deceased Surajbhan was re-admitted to Sapra Multispeciality, Hospital, Hisar on 09.06.2020 where he suffered an injury on account of a fall on the intervening night of 13th and 14th of June, 2020. He is stated to have been referred to Sarovadaya Hospital in an unconscious position. The deceased was admitted in Sarovadaya Hospital on the same night and MRI as well as CT scan of the deceased were conducted. Thereupon, he was referred to a multi specialty hospital Sukhda Hospital at Hisar. A surgery is stated to have been performed on the deceased, however, thereafter, he passed away on 08.07.2020

and the post-mortem was conducted on 19.07.2020. The learned counsel has argued that the name of the petitioner never figured as the assailant alleged to have caused injury, except in the supplementary statement of Anil Kumar (son of deceased Surajbhan) which was recorded on 09.07.2020. He submits that the said Anil Kumar is not a witness to the incident and that he had come to the plot after hearing about the incident that had taken place and had allegedly got injured and admitted to the hospital.

It is contended that apart from the aforesaid supplementary statement of Anil Kumar, a reference was also made during the investigation to the statement of one Arun Kumar recorded by the police on 19.06.2020, i.e. after a lapse of nearly 35 days of the incident. It is argued that as to whether the death was a direct result of the injury so caused or not is a moot question to be decided by the trial Court upon conclusion of the investigation. However, it cannot, *ipso facto*, be said conclusively that the death in question had occurred solely on account of injuries that are attributed to the petitioner. He further points out that the investigation in the case was concluded on 21.09.2020 and that a challan had been filed on 29.07.2021. Despite conclusion of the investigation, no evidence has been led by the prosecution so far, even though a period of nearly one year has elapsed since the framing of the charge. It is also submitted by the learned counsel that he had moved a petition for seeking interim bail on account of his health conditions and that he had

availed the benefit of interim bail for a period of 45 days and that he had surrendered as per the order of the interim bail and even during the period when he was availing the concession of anticipatory bail, he has not misused the said concession so extended in his favour.

Per contra, the learned counsel appearing on behalf of State of Haryana submits that the petitioner has been attributed the fatal injury as per the statement of PW Arun son of Balbir and also in the supplementary statement of Anil Kumar son of deceased Suraj Bhan and, as such, he is the main accused and that the injured Suraj Bhan had died as a result of impact of the injury so attributed to the petitioner. He, however, could not respond to the fact that the statement of Anil was recorded on 09.07.2020 which is nearly two months after the incident in question whereas the statement of Arun Kumar was recorded after a delay of nearly a period of 35 days. It is also noticed that the victim was discharged from the Pandit Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, Rohtak on 19.05.2022 and he was re-admitted on 09.06.2020. There is nothing on record to suggest that the victim did not remain oriented or conscious during the aforesaid period of nearly 20 days when he was at his home. There is apparently also no explanation as to why the Investigating Agency did not record the statement of Surajbhan during the said period so as to assess the role and participation of the petitioner.

I have learned counsel for the parties and have perused the material on record.

Taking into consideration the circumstances noticed above, and also the period of custody of nearly two years already undergone by the petitioner coupled with the fact that no prosecution witness has been examined so far. Moreover, the petitioner does not suffer any criminal antecedents and has also not misused the concession of interim bail granted to him at an earlier point of time, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

July 18, 2022
amit rana

(VINOD S. BHARDWAJ)
JUDGE

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