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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.16471 of 2021 (O&M)

Date of decision: 18.01.2022

Raghubir

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. S.K. Verma, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.275 dated 10.06.2017, for offence punishable under Sections 147, 148, 149, 323, 324, 325, 302, 506 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Sadar Dadri, District Charkhi Dadri.

The earlier one was dismissed vide order dated 09.10.2020 passed in CRM-M No.27307 of 2020.

The new ground for filing this 2nd petition is that now the statement of some of the material witnesses have been recorded and there are changed circumstances.

It is worth noticing that the first bail application of the petitioner was dismissed on 09.10.2020 by observing that the petitioner has given an axe blow on the head of the deceased whereas after going

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through the affidavit of the Investigating Officer and the statement of the material witnesses, there is a variation in the same.

Brief facts of the case are that the FIR was registered on the statement on complainant Arun, wherein it is stated that on 10.06.2017, he, along with Jagat Narain, Deepak, Ashwani and Rajbir, was present in his fields and was irrigating the same. Deepak, Jagat Narain and Ashwani were harvesting the Jvaar crop. In the meantime, accused Tek Ram, petitioner Raghubir, Vinod, Surender, Baljit, Sahil, Sujit, Sumit, Mange Ram, Ramesh, Kapil, Munni, Jarmany and Sunita, armed with axe, Rapri, Jailli and sticks, entered into their fields on a Mahindra tractor and attacked the complainant's side with their respective weapons. Jagat Narain was surrounded by Tek Ram, Munni, Raghubir s/o Tek Ram, Raghubir s/o Chiman Lal, Vinod and Surender. Tek Ram inflicted an axe blow on the head of Jagat Narain; Munni gave a Rapri blow on the head of Jagat Narain and petitioner, who was holding an axe, also inflicted injuries to Jagat Narain. Later on, Jagat Narain died.

Counsel for the petitioner has referred to the post-mortem report to argue that there are 18 injuries on the body of the deceased, out of which injury No.2 is a sharp cut of size 8 x 1 cm over the top of the head on the right parietal region, which reads as under:-

“1. A sharp cut of size 8 x 1 cm was present over the top of head over the right parietal region situated 2 cm from the midline. It was place in horizontal plane. Its margins were irregular, clean cut and ecchymosed. Scalp hairs were clean cut over the described wound area. On dissection, underlying soft tissues were ecchymosed. On further dissection and after reflection of scalp ecchymosis

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seen over the right side. A fracture of length 7.5 cm was seen underlying the sharp cut wound. The fracture ends of the bone showed clean cut margins. A radiating fracture of length 7.5 cm was present over the right parietal bone from the anterior end of sharp cut. Another radiating fracture of length 7 cm over the right parietal bone from the posterior end of sharp cut and other radiating fracture of length 4.5 cm was seen over the right parietal bone situated 2.5 cm from the posterior end of the sharp cut. The fractured ends of bones showed infiltration of blood in their bony trabeculae. On removal of cranial vault, a tear of length 4 cm of dura matter was present underlying the sharp cut. Subarachnoid haemorrhage was present over the bilaterally over the right parietal lobes of brain more so over the right side.”

Counsel for the petitioner has further submitted that all the other injuries are reddish contusion, which were caused with a weapon like lathi or stick and as per the opinion of the doctor, given in the post-mortem report, the head injury caused with a heavy sharp weapon, was sufficient to cause death in ordinary course of nature.

Counsel for the petitioner has, then referred to the allegations in the FIR as noticed even in the earlier order that it is stated that the accused Tek Ram, Raghubir (petitioner herein), Vinod and Surinder, were armed with axe. Counsel for the petitioner has further submitted that as per the prosecution version, at the first instance, the co-accused Tek Ram gave an axe blow on the head of Jagat Narain and thereafter, all the accused caused injuries to Jagat Narain, on all parts of his body, with their respective weapons. It is also submitted that the FIR version speaks about the axe injury caused by the co-accused Tek Ram and as per the post-mortem report, there is only one injury on the

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head of the deceased, which relates to a weapon like axe and therefore, it is only Tek Ram, who is attributed this injury.

Counsel for the petitioner has then, referred to the statement of PW-1 Arun, who has deposed on the same line and stated that it is the Tek Ram, who has given the axe blow on the head of the victim.

Counsel for the petitioner has again referred to the statement of PW-18 Ashwani, who had stated that Tek Ram opened the blow by giving the axe blow on the head of Jagat Narain and thereafter, all the other accused caused injuries.

Counsel for the petitioner has thus, argued that all the material witnesses have already been examined and considering this aspect, some of the co-accused including Vinod, as per the FIR, who was also armed with axe, has been granted the concession of regular bail vide order dated 26.11.2020 passed in CRM-M No.28715 of 2020 and another accused namely Sujit is also granted the concession of regular bail vide order dated 03.02.2020 passed in CRM-M No.18400 of 2019.

Counsel for the petitioner has further submitted that except Tek Ram, all the other accused have already been released on bail and the petitioner is an old man aged about 64 years and is suffering from age related medical problem.

Reply by way of affidavit of the Deputy Superintendent of Police, Charkhi Dadri, is on record. After verifying the allegations in the FIR, it is stated that during the investigation, the petitioner – Raghubir was arrested and a lathi was recovered from him as per his disclosure statement. It is further stated in his disclosure that he has

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inflicted lathi blow on the deceased.

Counsel for the State has further submitted that the prosecution evidence is going on and as per the Custody Certificate, the petitioner is in custody for the last more than 04 years and 06 months and the case is still at the stage of recording the prosecution evidence.

Counsel for the complainant has however, submitted that it is the petitioner, who has given the axe blow on the head of the complainant, however, could not dispute that in the post-mortem report, only injury No.2 is an injury, which is a co-relating with a sharp edged weapon like axe and the same is attributed to co-accused Tek Ram.

Counsel for the complainant also could not dispute the statement of the 02 PWs, who are the eye-witnesses and have stated that it is Tek Ram, who opened the attack by giving an axe blow on the head of the injured/victim and the other accused persons gave lathi blow.

In reply, counsel for the petitioner has submitted that all these facts were not there when the first application was dismissed by this Court on 09.10.2020 and a period of about 01 year and 04 months has lapsed and it will be a debatable issue whether the petitioner has given any axe blow on the head of the deceased in the light of the FIR version, the affidavit of the Investigating Officer as well as the statement of PW-18.

After hearing the counsel for the parties, considering the fact that the petitioner is an old man, aged about 64 years; he is in custody for the last about 04 years and 06 months; the case is still at the stage of the prosecution evidence; all the material witnesses have been examined and there is no possibility for the petitioner to tamper with

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the prosecution evidence, I deem it appropriate to release the petitioner on regular bail.

Accordingly, the present petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

18.01.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No