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

CRM-M-28102-2022 (O&M)
Date of decision : 29.09.2022

Abdul Wahab

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Rai, Sr. Advocate with
Ms. Eknor Sra, Advocate and
Mr. Jamshed Ahmed, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Akashdeep Singh, Advocate and
Mr. Talim Hussain, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.101 dated 30.05.2021 registered under Sections 148, 149, 323, 325, 307, 452, 506 of the Indian Penal Code, 1860 at Police Station Nagina, District Nuh.

Learned Senior Counsel for the petitioner has submitted that the petitioner is in custody since 19.04.2022 and investigation is complete and the challan/supplementary challan has already been presented and there are 29 prosecution witnesses, out of which, none have been examined yet and thus, the conclusion of trial is likely to take time. It is further submitted that

in the present case, as per the FIR, the petitioner has been attributed one injury with an iron rod on the head of son of the complainant i.e., Sabir. It is contended that the first challan was submitted on 01.04.2022 i.e., before the present petitioner was arrested and the confessional statement of Wasim was part of the first challan dated 01.04.2022 and as per the said confessional statement, said Wasim was stated to have given an iron rod blow on the head and body of Sabir, son of the complainant and the iron rod had been recovered from the said Wasim. It is further contended that the injured-Sabir had suffered one injury on the head and it is only subsequently that on 19.04.2022, the present petitioner was arrested and supplementary challan dated 13.06.2022 was presented against the present petitioner. It is argued that two persons have been attributed the same one injury on the person of Sabir. It is further argued that in the present case, it is not a matter of dispute that the injured-Sabir was initially admitted in Civil Hospital, Mandikhera from where he was referred to Safdarjung Hospital and was admitted in Safdarjung Hospital on 29.05.2021 and was discharged from the said Safdarjung Hospital on 02.06.2021 and thereafter, he had got himself admitted in Meera Hospital, Alwar which is a private hospital from 03.06.2021 uptill 10.06.2021. It is also submitted that although, as per the case of the prosecution, the operation was performed at Safdarjung Hospital yet no opinion has been taken from Safdarjung Hospital with respect to the fact as to whether the injury on the head of Sabir was dangerous to life or not and the said opinion has been taken from Civil Hospital, Mandikhera where the injured had not even been operated. It is also contended that the complainant also has four cases registered against him.

On the other hand, learned State Counsel as well as the complainant have opposed the present petition for grant of regular bail to the petitioner and have submitted that the complainant had to undergo operation and the procedure performed is mentioned in the Certificate annexed as Annexure P-6 which is a Certificate issued by the Medical Officer, Civil Hospital, Mandikhera and the said procedure is reproduced hereasunder:-

“At sufdurjung hospital left FTP craniotomy+left frontal+temporal contusectomy done under with placement of bone flap in anterior abdomen wall on 30/05/2021.”

It is further submitted that it was the case of the complainant in the FIR that it was the present petitioner who had inflicted the injury on the head of Sabir and even the iron rod was initially recovered from the present petitioner. It is contended that the factum with respect to attribution of the said injury to Wasim was on account of the fact that the present petitioner was not challaned in the first challan. It was only when the complainant had filed a petition under Section 482 of Cr.P.C., that the petitioner was arrested on 19.04.2022. It is also argued that the complainant is not keeping good health and for the said purpose, learned counsel has relied upon Medical Certificate dated 27.04.2022 issued by the Safdarjung Hospital, New Delhi and also Certificates issued prior to the same. It is also submitted that the petitioner is involved in four other cases.

Learned Senior Counsel for the petitioner, in rebuttal to the abovesaid arguments, has submitted that out of four cases, the petitioner has been declared as innocent in two cases and in the remaining two cases, he is

on bail and has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

It is further submitted that the last Certificate of Safdarjung Hospital, New Delhi is dated 27.04.2022 and there is no Certificate subsequent to the same showing that the complainant has been suffering from any illness/problem. It is also contended that it is apparent that the remark “forgetful” on the said Certificate has been made on the statement of the complainant himself without there being any opinion of a Doctor on the said aspect. It is also argued that from Wasim, iron rod was recovered prior to 01.04.2022 whereas recovery of iron rod has been effected from the present petitioner subsequent to the prosecution having presented challan dated 01.04.2022, as per which, the injury on the head of the injured-Sabir with the iron rod was attributed to Wasim.

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

In the present case, the petitioner is in custody since 19.04.2022 and investigation is complete and the challan/supplementary challan has already been presented and out of 29 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. Although, in the FIR, the petitioner has been attributed one injury with an iron rod on the head of son of the complainant i.e. Sabir but a perusal of the confessional statement of accused Wasim (Annexure P2, page 24 of the paper book) would show that it is the case of the prosecution that the said Wasim had given an iron rod blow on the head and body of Sabir and one iron rod has been recovered from the said Wasim. The first challan dated 01.04.2022 was presented against seven persons and not against the petitioner. The petitioner has been arrested subsequent to the filing of the first challan dated 01.04.2022, on 19.04.2022. There is one injury which has been suffered by Sabir on the head. The question as to whether it is the petitioner or the said Wasim who has given the said injury, would be considered and finally adjudicated during the course of trial. The said complainant-Sabir was admitted in Safdarjung Hospital from 29.05.2021 to 02.06.2021 on which date, he was discharged from the said Hospital and it is the case of the prosecution that the operation was also performed at Safdarjung Hospital but no opinion has been taken from the said Safdarjung Hospital with respect to the said injury on the head of Sabir before declaring the same to be dangerous to life. There is no Certificate subsequent to 27.04.2022 to show that the complainant is still having any health issues.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on

regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an 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 application.

Learned Senior Counsel for the petitioner as well as counsel for the complainant have submitted that the petitioner as well as complainant are residing in separate streets, although, they are residing in the same village and both have stated that the petitioner as well as the complainant would give an undertaking before the Illaqa Magistrate within a period of two weeks from today that they would not enter each other's street till the time the complainant and his son are examined in the matter.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

29.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

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

Whether reportable:- **Yes/No**