

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28450-2022
Date of decision : 15.07.2022

Sheru @ Sher Mohammad

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sunil Panwar, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

Mr.D.S. Matya, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.154 dated 05.04.2021 registered under Sections 148, 149, 323, 302, 452, 506 IPC at Police Station Ferozepur Jhirka, District Nuh, Haryana.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 19.04.2021 and there are 20 prosecution witnesses out of which 5 witnesses have been examined and 15 witnesses are yet to be examined, thus, the trial is likely to take time. It is further submitted that as per the FIR, no injury has been attributed to the petitioner with respect to the deceased Saddam and the injury to the said Saddam has been attributed to the co-accused Samsu, Sahun and Junaid. It

petitioner with the stick on the head of the complainant and the said injury has been declared as simple and for the same, reference has been made to page 3 of the petition, in which the MLR of the complainant has been reproduced as per which the injuries suffered by the complainant were two in number and both were declared simple. It is stated that the said complainant has been examined as PW-1 and in his examination-in-chief, he has tried to improve his case and has attributed another injury to the petitioner, i.e. *lathi* blow on the right hand of the deceased Saddam. It is further stated that a perusal of the PMR would show that the deceased had only suffered one injury on the head which has been attributed to the above said three persons and there was no injury suffered by him on his right hand. It is further stated that the petitioner was involved in one case in 2010 and in said case, he was declared as innocent and even the application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused was dismissed and in the revision petition filed by the complainant, the petitioner was not ordered to be summoned. It is further submitted that other than the said case, there is no other case against the petitioner.

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that the petitioner, along with co-accused, had conspired amongst themselves and had killed Saddam and thus, the individual role of the petitioner alone is not to be seen. It is further argued that the sons of the petitioner have threatened the complainant with dire consequences once the petitioner is released from jail and has also submitted that the mother of the complainant, is yet to be examined.

Learned counsel for the petitioner, in rebuttal, has submitted

that no complaint has been given by the complainant to any person/authority with respect to the said alleged threat and the mother of the complainant Smt.Jaida has not appeared for giving her evidence inspite of the fact that 8 opportunities have been granted to her and she has been served through non-bailable warrants also.

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

A perusal of the FIR would show that three persons Samsu, Sahun and Junaid have been alleged to have caused injuries on the head of the deceased Saddam. No injury has been attributed to the petitioner with respect to the deceased. The petitioner has been attributed only one injury with a stick on the head of the complainant, which is a simple injury. Although the complainant has tried to improve his case while being examined as PW-1 inasmuch as he had stated that the present petitioner had also given a *lathi* blow to the deceased on his right hand but a perusal of the PMR of the deceased would show that there was no such injury suffered by him on his right hand. In fact as per the PMR, there is only one injury on the head of the deceased which has been attributed to the above said three persons. The petitioner has been in custody since 19.04.2021 and the challan has been presented and there are 20 prosecution witnesses out of which 5 witnesses have been examined and 15 witnesses are to be examined, thus, the trial is likely to take time. There is no other case pending against the petitioner.

Keeping in view the above said facts and circumstances, the present petition 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, it is made clear that in case, any act is done by the petitioner to threaten or influence 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 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.

(VIKAS BAHL)
JUDGE

July 15, 2022
Davinder Kumar

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