

236

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

Date of decision: 30.08.2022

1. CRM-M No.34603 of 2021 (O&M)

Rajesh

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.24367 of 2021 (O&M)

Ram Pal

....Petitioner

Versus

State of Haryana

....Respondent

3. CRM-M No.26618 of 2021 (O&M)

Rajbir

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Vats, Advocate
for the petitioner(s)(in CRM-M-34603-26618-2021).

Mr. Sandeep Kotla, Advocate
for the petitioner (in CRM-M-24367-2021)

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in all these petitions is for grant of regular bail to the petitioners namely Rajesh, Ram Pal and Rajbir under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.123 dated 18.05.2020, for offence punishable under Sections 148, 149, 302, 323,

452 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Baroda, Tehsil Gohana, District Sonapat.

Counsel for the petitioners have relied upon the order dated 17.11.2020 vide which, the co-accused of the petitioners namely Sunil was granted the concession of regular bail on 25.02.2021 passed in CRM-M No.29969 of 2020. The operative part of the said order reads as under:-

“Prayer in this 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.123 dated 18.05.2020, for offence punishable under Sections 148, 149, 302, 323, 452 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Baroda, Gohana, District Sonapat.

Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Bijender, his family is having a civil litigation against Rampal son of Giani Ram and the Civil Court has decided the case in favour of the complainant party. On 17.05.2020, Rampal, Satyawar, Parveen, Iswar, Rajesh, Jai Bhagwan, Rajbir, Omi, Sunil (petitioner herein), Neeta, Sonu, Ravinder and Monu, who belong to the family of Rampal, started throwing bricks at the house of the complainant and when the complainant, his brother Narinder and elder brother Jagbir came out to see what is happening, the aforesaid persons armed with weapons attacked them. Rampal hit Bijender with a brick on his head and left shoulder, Monu hit his brother Narinder with a brick on his face and Rajbir hit on the legs and the arms with sticks and danda. Jai Bhagwan and Sonu caused injuries to Jagbir with brick, who was standing at verandah on the terrace of the house, which hit on the chest and back, due to which, he succumbed to his injuries while taking to PGI, Rohtak. It is further submitted that in fact, it was a case of free fight in which from the petitioner's side, 02 persons namely Jai Bhagwan and Rajbir, also suffered injuries and in this regard, a DDR has been registered with the police for treating it as a cross-version.

Counsel for the petitioner has also submitted that the petitioner – Sunil, though, named in the FIR but no specific role is attributed to him except that he was present at the spot. It is further submitted that neither any recovery is effected from the petitioner nor his disclosure recorded regarding his participation in the commission of offence is signed by him.

Counsel for the petitioner has also submitted that challan stands presented and it will take long time in conclusion of the trial. It is also submitted that the petitioner is not involved in any other case.

Counsel for the State has filed the affidavit of the Additional Superintendent of Police, Gohana, Sonapat and has not disputed the factual position as per the allegations in the FIR as well as the MLRs relied upon by the petitioner but opposed the prayer for bail.

After hearing the counsel for the parties and going through the contents of the FIR; MLRs relied upon by the petitioner as well as the role of the petitioner; and also in view of the fact that in the affidavit also, there is no role attributed to the petitioner; challan stands presented; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this 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.”

The new ground for filing these petitions is that both the injured witnesses namely Bijender, who is examined as PW-1 and Narinder, who is examined as PW-2, have been examined and no overt act towards the deceased Jagbir is attributed to the present petitioners.

Counsel for the petitioners have referred to the statement of PW-1 Bijender, who has stated that on the date of incident i.e. 17.05.2020, all the accused armed with lathis, dandas, stones and

bricks, came with an intention to teach a lesson as the complainant's side have won a case against them. The petitioner – Ram Pal inflicted injuries on the head and left shoulder with a brick to PW-1 Bijender. This witness has further stated that thereafter Jagbir was attacked by Sonu and Jai Bhagwan son of Dharampal with bricks and lathis on his chest and thereafter, the accused were throwing bricks from all the directions. This witness has also stated that later on Jagbir was taken to hospital by himself and his brother Narinder where he died. Counsel for the petitioners have then referred to the statement of PW-2, who has also stated on the same terms by stating that Jai Bhagwan son of Dharampal inflicted injuries to his brother Jagbir and Sonu also caused injuries to him. The petitioner – Ram Pal caused a brick blow on his brother and the petitioners Rajesh and Rajbir had caused injuries with their respective weapons to these two witnesses.

Counsel for the petitioners, on behalf of the petitioner Ram Pal, have further argued that as per the MLR of Bijender to whom the petitioner Dharampal has attributed injuries with a brick, submitted that in the MLR, no fracture was seen and only swelling with complain of pain was seen over maxillary area.

Counsel for the petitioners have also submitted that as on today, the custody of the petitioner – Ram Pal is 02 years, 03 months and 08 days whereas the custody of the petitioners namely Rajesh and Rajbir is 02 years, 03 months and 07 days.

Separate reply on behalf of the Investigating Officer is filed in all the cases.

In the affidavit, with regard to accused Rajesh, it is stated that after his arrest along with co-accused Rajbir and Ram Pal, Rajesh made a disclosure statement that he has caused injuries to Narinder and Bijender with a wooden bat and later on, he got recovered the same. In the second affidavit qua the petitioner – Ram Pal, it is stated that on account of a civil dispute having been decided in favour of the complainant party, there was a motive to launch the attack and the petitioner – Ram Pal caused injuries on the head and left shoulder of Bijender. In the corresponding affidavit with regard to the injuries caused by Rajbir, it is stated that he has also caused injuries with a wooden batten to Bijender and Narinder and the same was got recovered.

Counsel for the State has further argued that as on today, out of 22 PWs, only 11 PWs have been examined including the 02 eye-witnesses. The custody of the petitioners as per the custody certificate, is also not denied.

The custody certificate further reveals that the petitioner Rajbir is involved in one case under Section 323 IPC and the petitioner – Ram Pal is also involved in one case under Section 323 IPC and the petitioner Rajesh is not involved in any other case under the Indian Penal Code.

Without commenting anything on merits of the case, considering the fact that the petitioners are in custody for the last more than 02 years and 03 months; some of the co-accused of the petitioners are already released on bail; the custodial interrogation of the petitioners is not required and the conclusion of the trial will take some

time, all these petitions are allowed and the petitioners namely Rajesh, Ram Pal and Rajbir are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

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

A photocopy of this order be placed on the file of other connected cases.

(ARVIND SINGH SANGWAN)
JUDGE

30.08.2022
yakub

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