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

1.

CRM-M-30953-2022
Date of decision : 30.08.2022

Mohd. Juber

...Petitioner

Versus

State of Haryana

...Respondent

2.

CRM-M-35910-2022
Date of decision : 30.08.2022

Sattar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jitender Dhanda, Advocate for the petitioner
(In both the petitions)

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

By this common order, two petitions bearing No.CRM-M
Nos.30953 and 35910 of 2022 shall stand disposed of.

CRM-M-30953-2022 has been filed by Mohd. Juber and CRM-M-
M-35910-2022 has been filed by Sattar, for grant of regular bail to them in
FIR No.154 dated 05.04.2021 registered under Sections 148, 149, 323, 302,

452, 506 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Ferozepur Jhirka, District Nuh.

Learned counsel for both the petitioners have submitted that the petitioner-Mohd. Juber is in custody since 19.04.2021 and the petitioner-Sattar is in custody since 10.06.2021. It is further submitted that 14 prosecution witnesses still remain to be examined and thus, the conclusion of trial is likely to take time. It is contended that as per the FIR, no injury has been attributed to both the petitioners with respect to the deceased-Saddam and the injuries suffered by the said Saddam have been attributed to the co-accused Samshu, Sahun and Junaid. It is further contended that the petitioner-Mohd. Juber has been attributed one injury with a stick (*lathi*) on the right hand of father of the complainant which, although, is stated to be a fracture but no offence under Section 325 of the IPC has been added by the prosecution. It is argued that at any rate, at best, Section 325 of the IPC would be attracted in the present case against the petitioner-Mohd. Juber, which is a bailable offence. It is further argued that the petitioner-Sattar has been attributed one injury to the father of the complainant namely Harun with the stick (*lathi*) which is allegedly inflicted on his head but the said injury has been declared to be simple in nature. It is also submitted that Mohd. Aaris, who is the complainant in the present case, has been examined as PW1 and in his evidence, he has tried to improve his version by stating that Mohd. Juber had also inflicted one *lathi* blow on the left hand of deceased-Saddam and in the cross-examination, he has stated that the petitioner-Mohd. Juber had given one *lathi* blow on the leg of Saddam but as per the PMR, the deceased had suffered only one injury on the head which has been attributed to the

abovesaid three persons and there was no injury suffered by him on the left hand or on the leg. It is also argued that the co-accused of the petitioner namely Sheru @ Sher Mohammad has been granted the concession of regular bail by this Court vide order dated 15.07.2022 passed in CRM-M-28450-2022.

On the other hand, learned State counsel has opposed the present petition for regular bail to the petitioner(s) and has submitted that the petitioner(s), along with the 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 submitted that the petitioner-Mohd. Juber is involved in one case under the Arms Act, 1959 and that he had filed an earlier bail application as well, which had been dismissed as withdrawn on 19.04.2022.

Learned counsel for the petitioner(s), in rebuttal to the abovesaid argument, has submitted that on 19.04.2022, the case was dismissed as withdrawn at that stage with liberty to file a fresh petition after the examination of the complainant and the injured witnesses. It is further submitted that subsequent to the same, the complainant and the injured witnesses have been examined and the petitioner has further undergone a substantial additional period of custody after passing of the order dated 19.04.2022, thus, entitling the petitioner-Mohd. Juber to file the present second petition for grant of regular bail. He has also contended that the petitioner is already on bail in the abovesaid other case 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.”

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

The petitioner-Mohd. Juber is in custody since 19.04.2021 and the petitioner-Sattar is in custody since 10.06.2021 and 14 prosecution witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. No injury has been attributed to either of the petitioners with respect to the deceased-Saddam, as per the FIR. As per the FIR, Mohd. Juber has been attributed one injury on the right hand of father of the complainant with the stick (*lathi*), which at best would attract Section 325 of the IPC although, Section 325 of the IPC has not been added by the prosecution. The petitioner-Sattar has been attributed a simple injury inflicted on the head of father of the complainant with the stick (*lathi*). Although, PW1 (complainant) has tried to improve his case by stating in his examination-in-chief that Mohd. Juber had also inflicted a lathi blow on the left hand of Saddam and by stating in his cross-examination that he had inflicted a lathi blow on the leg of Saddam but as per the PMR, the deceased-Saddam has only suffered

one injury on his head which has been attributed to co-accused Samshu, Sahun and Junaid and there is no injury suffered by him on his left hand or his leg. The co-accused of the petitioner namely Sheru @ Sher Mohammad has been granted the concession of regular bail by this Court vide order dated 15.07.2022 passed in CRM-M-28450-2022.

Keeping in view the abovesaid facts and circumstances as well as law laid down in ***Maulana Mohd. Amir Rashadi's*** case (Supra), both the petitions are allowed and the petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner(s) 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(s).

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.

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

30.08.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**