

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

CRM-M-37404-2022 (O & M)

Date of decision: 29.08.2022

Shamsher @ Shamshu

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Parmod Parmar, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana,

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.347 dated 16.06.2019 registered under Sections 148, 149, 323, 506, 307,302 IPC registered at Police Station City Narnaul, District Mahendergarh, Haryana.

2. The FIR came to be registered at the instance of Kunal son of Late Sh. Sandeep Kumar who stated that on 15.06.2019 he had gone to the party of Vishnu Saini son of Rohtash Saini who was a friend of his brother Bhupesh. He returned from the party and went to sleep. At about 2'O clock Rohit, Neeraj son of Rohtash and Vinay son of Radhay Sham came to his house and disclosed to him that after the party some persons had come in a vehicle and on 3/ 4 motor cycles in which Shiv Dayal, Monu Pehalwal and Pankaj Gohra along with 10/15 other persons were travelling and gave lathi

blows on head of his younger brother and his brother had been taken to

Government Hospital, Narnaul. The complainant asked to accompany the aforementioned three boys. When he reached the hospital he saw that serious injuries had been suffered by his brother on the head because of which the doctor had referred his brother to a higher hospital. Thereafter he took his brother to NIMS Hospital, Jaipur where his treatment was going on.

3. After the registration of the FIR under Sections 148, 149, 323, 506 IPC, later on Section 307 IPC and 120-B IPC was added and after the death of the injured Bhupesh, Section 302 IPC was added on 25.06.2019.

4. The learned counsel for the petitioner contends that the petitioner was not named in the FIR. However, the petitioner has been named on the basis of confessional statement of his co-accused. He submits that four co-accused of the petitioner, namely, Manish, minor (now major), Mahipal @ Monti and Lokesh Kumar as well as Krishan @ Bahu have been granted the concession of bail vide order dated 05.08.2022 passed by this Court in CRM-M-50552-2021 & CRM-M-27573-2022 and order dated 25.08.2022 passed in CRM-M-36730-2022 respectively. He contends that 17 of the 32 prosecution witnesses have been examined during trial and all the material witnesses i.e. Complainant-Kunal (PW-1), Mohit (PW-2), Vishnu (PW-3), Vinay (PW-4), Pawan (PW-5), Rohit (PW-6) and Parveen (PW-7) did not support the case of the prosecution and were, therefore, declared hostile by the Trial Court. It is lastly contended that as the petitioner is in custody since 21.06.2019, therefore, he deserves the concession of regular bail.

5. The learned counsel for the State does not dispute the aforesaid facts. He, however, submits that even though the said witnesses have turned hostile, the nature of allegations against the petitioner does not entitle him to the grant of bail.

6. I have heard learned Counsel for both the parties at length.

7. Admittedly, all the material witnesses have turned hostile, therefore, the question of threatening or intimidating the witnesses does not arise. The Hon'ble Supreme Court in “Dr. Gokarakonda Naga Saibaba Versus State of Maharashtra, 2016(2) RCR (Criminal) 675 and this Court in “Devender Singh @ Devender Chhabra @ Tintu Versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016 has held that grant of bail can be considered, where witnesses stand examined. The co-accused of the petitioner, namely, Manish, minor (now major), Mahipal @ Monti and Lokesh Kumar and Krishan @ Bahu have been granted the concession of bail vide order dated 05.08.2022 passed by this Court in CRM-M 50552-2021 and CRM-M-27573-2022 and order dated 25.08.2022 passed in CRM-M-36730-2022 respectively. The petitioner is in custody since 21.06.2019 and the trial of the case is not likely to be concluded in the near future. Therefore, the further incarceration of the petitioner is not required.

8. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner, namely, Shamsher @ Shamshu son of Hukam Chand is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 29, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No