

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

CRM-M-42021-2021

Date of decision : 19.04.2022

Jairaj

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Gautam Dutt, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

Mr. Kunal Dawar, 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.351 dated 28.06.2020 registered under Sections 148, 149, 323, 324 and 341 of the Indian Penal Code, 1860 (Sections 325, 302 and 120-B of IPC have been added later on) at Police Station Mujesar, Faridabad, District Faridabad.

Learned counsel for the petitioner has submitted that in the present case, the alleged incident had taken place on 28.06.2020 and the FIR had been got registered by the victim-Ankit himself, who was thus, alive after the alleged incident had taken place. It is further submitted that the

said Ankit had died on 01.07.2020 on account of his not having been given the requisite treatment. It is argued that the question as to whether the offence under Section 302 of IPC is made out or not is a debatable issue in the present case. It is further argued that even as per the FIR, the present petitioner has not been attributed any specific injury, although, he was stated to be armed with an iron rod. It is contended that as per the MLR and the postmortem Report, the alleged fatal injury had been inflicted by co-accused Abhishek. It is also contended that in the present case, the petitioner has been in custody since 07.07.2020 and initially, the challan had been presented and, thereafter, the brother of the deceased, who is now the complainant in the present case, was examined and although the challan had been presented against four persons including the present petitioner, but on the basis of the statement made by the said complainant, an application under Section 319 of Cr.P.C. had been moved by the prosecution and vide order dated 11.11.2021, three persons had been summoned as additional accused to face trial. It is contended that the said order dated 11.11.2021 has been challenged by way of filing CRR-1688-2021 and in the said case, notice of motion has been issued and the operation of the impugned order dated 11.11.2021 has been stayed and the said matter is now listed for 17.08.2022. It is further contended that in the present case, there are 20 witnesses, out of which, four have been examined as yet but further trial in the case would also depend on the final order passed with respect to the application filed under Section 319 of Cr.P.C. It is submitted that in case, such impugned order under Section 319 of Cr.P.C. is upheld, then there would be a denovo trial and has further submitted that even in case, the

impugned order is set aside, then also 16 more witnesses are required to be examined and thus, the conclusion of the trial is likely to take time, moreso, in view of the present COVID-19 pandemic. It is also argued that the petitioner is not involved in any other case and thus, it has been prayed that the petitioner deserves the concession of regular bail.

Learned counsel for the petitioner has further submitted that co-accused of the petitioner Nikke @ Kuldeep has already been granted regular bail vide order dated 11.03.2022 passed in CRM-M-20657-2021 and only difference in the case of the petitioner from the said Nikke @ Kuldeep is that there is an allegation levelled in the FIR that Jairaj had used his iron rod but however, it has not been specified as to on which part of body the iron rod had been hit and it is thus submitted that the case of the petitioner should be treated on parity with the case of Nikke @ Kuldeep moreso, when the present petitioner has undergone a further period in custody of 1 month and 8 days more than the co-accused Nikke @ Kuldeep.

Notice of motion.

On advance notice, Mr. Munish Sharma, AAG, Haryana, appears and accepts notice on behalf of the State and Mr. Kunal Dawar, Advocate appears on behalf of the complainant and they have submitted that they are fully prepared to argue the matter and assist this Court. They have opposed the present petition for grant of regular bail to the petitioner and have submitted that a perusal of the FIR would show that there were two incidents that occurred and in both the incidents, the present petitioner was present. It is also thus, apparent, that there was a common intention shared by all the accused persons to cause injuries to the deceased. It is further

submitted that in case, the order dated 11.11.2021 is upheld, then the complainant would have to be examined again and thus, there could be a chance at that stage, that the petitioner might influence the said complainant who is brother of the deceased.

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

A perusal of the FIR would show that the incident in the present case had taken place on 28.06.2020. The FIR had been registered on the statement of the deceased Ankit himself. As per the version in the FIR, it was Abhishek (co-accused) who had inflicted the knife injury upon the chest of the deceased. No specific injury is stated to have been inflicted by the petitioner, who was stated to be armed with a iron rod. A perusal of the MLR would show that three injuries were inflicted on the person of the deceased. The said injuries are reproduced hereinbelow:-

<i>Sr. No.</i>	<i>Injuries</i>	<i>Marked</i>	<i>Injury Number</i>
1	INCISED WOUND OF SIZE 5 CM X 1 CM OVER LEFT MAMMARY REGION WITH NO ACTIVE BLEED PRESENT ADVISE X-RAY, CHEST AP/LAT, SURGEON OPINION NOI-KUO, KOW-SHARP, P DOI-WITHIN 12 HOURS	No	1
2	ABRASION OF SIZE 8CM X 3CM OVER LEFT ARM WITH FOREARM ADVISE X-RAY LEFT ARM WITH FOREARM AP/LAT, ORTHO SURGEON OPINION NOI-KUO, KOW-BLUNT, P DOI-WITHIN 12 HOURS	No	2
3	SWELLING WITH TENDERNESS PRESENT OVER LEFT HAND ADVISE X-RAY LEFT WRIST WITH HAND AP/LAT, ORTHO SURGEON OPINION NOI-KUO, KOW-BLUNT, P DOI-WITHIN 12 HOURS	No	3

As per the FIR, 6 accused persons were named therein and two persons were stated to be unknown. Injury No.1 in the MLR has been attributed to co-accused Abhishek. Injury Nos.2 and 3 have been attributed to the other 7 persons, as no specific attribution has been made with respect to said injuries. Both the said injuries are stated to have been inflicted on the non-vital parts i.e. on the forearm and left hand of the deceased. Injury No.3 is stated to have been caused on the left hand which is stated to be grievous and would attract Section 325 of IPC.

As per the Postmortem Report, there are two additional injuries shown therein. Relevant portion of the postmortem report is reproduced hereinbelow:-

<i>Sr. No.</i>	<i>Injuries</i>	<i>Marked</i>	<i>Injury Number</i>
1	A LARGE VIOLET COLOUR BRUISE OF 13 CM X 6 CM PRESENT ON THE LOWER AND MID LEFT ARM ON THE ANTEROMEDIAL ASPECT	No	1
2	A HORIZONTAL STITCHED WOUND OF LENGTH 5 CM PRESENT ON THE LATERAL ASPECT OF THE LEFT NIPPLE WHICH ON FURTHER EXAMINATION AFTER DISSECTION REVEALED TO BE SUPERFICIAL	No	2
3	MULTIPLE VIOLET COLOUR BRUISES OF VARIABLE SIZES RANGING FROM 2 CM X 1 CM TO 8 CM X 5 CM PRESENT ON THE MEDIAL RIGHT KNEE, LEFT KNEE, LATERAL ASPECT OF RIGHT THIGH	No	3
4	INDEX FINGER OF THE LEFT HAND IS BADAGED WHICH ON FURTHER EXAMINATION SHOWS SWELLING OF THE INDEX FINGER AND LEFT HAND	No	4
5	MULTIPLE PURPURA OVER CHEST AND ABDOMEN	No	5

OPINION

Cause of Death

HAEMMORHAGIC SHOCK DUE TO INJURY TO THE VITAL ORGAN i.e. HEART SUFFICIENT TO CAUSE DEATH IN ORDINARY COURSE OF NATURE.”

A perusal of the above injuries would show that although in the MLR, there were three injuries shown but in the postmortem report, five injuries were shown. The cause of death is stated to be the injury to the vital organ i.e. Heart, which injury would be injury No.2 (in the postmortem Report) and the same has been attributed to co-accused Abhishek. Injury No.2 in the postmortem report is same as injury No.1 in the MLR. Injury No.1 in the postmortem report is same as injury No.2 in the MLR and injury No.4 in the postmortem report is injury No.3 in the MLR. As far as injury No.3 in the postmortem report, which was on the right thigh of the deceased, is concerned, the same is not shown in the MLR but at any rate, the same was on a non-vital part. Thus, as per the original case of the prosecution, the injury which has been proved to be fatal is attributed to Abhishek and 2/4 injuries have been attributed to other 7 persons. It has been highlighted by the learned counsel for the petitioner that in the present case, the said Ankit had died on 01.07.2020, although, the date of incident was 28.06.2020. It is submitted that the events that had transpired between 28.06.2020 to 01.07.2020 would be vital to ascertain as to whether his death had taken place on account of inadequate medical treatment or solely on account of the injuries he had suffered in the alleged incident that took place on 28.06.2020. The said argument raises a debatable point which would be considered at the time of trial. It is not in dispute that no specific injury has been attributed to the petitioner and the petitioner has been in custody since 07.07.2020 and although, initially the challan had been presented against four persons but after the examination of the brother of the deceased, who is now the complainant in the present case, an application was moved under

Section 319 of Cr.P.C. by the State and vide order dated 11.11.2021, three other persons had been summoned as additional accused and the said order has been challenged by the said three additional accused by way of filing CRR-1688-2021, in which, notice of motion has been issued vide order dated 12.01.2022 and the operation of order dated 11.11.2021 has been stayed and the said case is now pending for 17.08.2022. It is, thus, apparent that the trial is likely to take time in both the situations i.e. if the impugned order is upheld, then the four witnesses out of 20 witnesses, who are stated to have been examined, would have to be re-examined and if the order dated 11.11.2021 is set aside, then also, the rest of the 16 witnesses would have to be examined. Thus, the conclusion of the trial is likely to take time. The petitioner is also stated to be not involved in any other case. The co-accused of the petitioner Nikke @ Kuldeep already been granted regular bail by this Court vide order dated 11.03.2022 passed in CRM-M-20657-2021.

Keeping in view the above said facts and circumstances, the present petition for regular bail is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/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 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.

(VIKAS BAHL)
JUDGE

April 19, 2022
Davinder Kumar

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