

CRM-M-44083-2021 and :1:
CRM-M-48217-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214 CRM-M-44083-2021

GAURAV BAISLA

..... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

..... Respondents

(2)

CRM-M-48217-2021
Date of decision : 24.01.2022

GAURAV BAISLA

..... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Ganesh Chand Sharma, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Ms. Jasneet Mehra, Advocate
for respondents No.2 and 3.

(Through video conferencing)

Harsimran Singh Sethi, J. (Oral)

By this common order two petitions, which arise out of the
same FIR are being disposed of.

The prayer in these petitions is for cancelling the bail which has
been granted to the private respondents/accused by the Court below. Learned

counsel for the petitioner submits that an FIR was got registered against the private respondents bearing FIR No.443 dated 19.07.2021 registered under Sections 148, 149, 323, 324, 325, 427, 429, 307 and 506 IPC at Police Station Ballabgarh City, District Faridabad. Learned counsel argues that the injuries which the victim has received are life threatening and have been inflicted on the head of one of the victims but still, without taking into consideration the injuries inflicted upon the victims, as well as the fact that private respondents were part of an unlawful assembly with specific allegations of inflicting injury against them, private respondents have been extended the concession of regular bail by the Court below by merely considering the nature of weapon attributed to them i.e. dandas and the accusation of giving fist blows and that too, at a stage where the challan has only been presented after the grant of bail to the respondents/accused and the material witnesses including complainants/victims are yet to be examined.

Learned State counsel submits that the injuries received by the victims are life threatening and one of the victim has received injuries on the head and as, the private respondent/accused were part of the unlawful assembly with specific allegations against them of inflicting injuries upon the victims, merely by noticing the fact that the respondent/accused were only armed with danda and attributed blow with the said weapon along with fist injuries and were not required by the Investigating Agency for further investigation as of now, though the said ground is not sufficient enough ground for the trial Court to grant the concession of bail to the private respondents given the seriousness of the offence they are charged with.

Learned counsel appearing on behalf of the private

respondents/accused submits that though, the victim received life threatening injuries one of which is on the head of a victim which fact has been supported by the medical opinion, but as, the role attributed to the petitioner is only to have inflicted injuries with dandas and fist blows and not the grievous injuries received by the victims, the grant of regular bail by the Court below is perfectly valid and needs no interference by this Court.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present cases, after receipt of the medical opinion, the injuries found on the person of the victims were opined to be life threatening and grave enough so as to invoke Section 307 of IPC. Besides this Section 149 IPC has been invoked in the present FIR, i.e. constituting unlawful assembly and the private respondents have been arraigned as part of the same.

While considering the prayer for the grant of bail, the Court has to see various aspects including the allegations alleged against the said accused, weapon and the injuries attributed, the stage of the investigation/trial as the case may be. The Court has to ensure that the grant of bail to an accused shall not hamper either in the investigation or the trial and while considering the prayer of the accused for the grant of bail, the allegations alleged against the accused has to be kept in mind. Mere incarceration for a particular period, ignoring the other relevant facts, cannot be a ground for grant of bail.

Further, wherever, the prayer of the accused for the grant of bail is based upon the fact that other co-accused has been granted the concession

of regular bail, the Court has to ensure that there exist a parity between the accused seeking bail with the co-accused who has been granted bail in respect of the allegations alleged. Bail to an accused on the ground of parity, cannot be granted unless and until both the accused stand on the same footing on all aspects including the allegations alleged against them.

In the present case a perusal of the order would show that the Court below has extended the concession of bail to the private respondents/accused on the ground that they were only attributed danda as a weapon and the injuries by fist blows. Further, the interim bail granted to a co-accused namely Bacchu Singh has also been relied upon.

The facts/allegations relating to co-accused Bacchu Singh and the respondents/accused are entirely different. Co-accused Bacchu Singh has not been attributed any injury or weapon and he is 75 years old, whereas there are specific allegations against the respondent-co-accused with regard to use of weapon and inflicting injuries upon the victim.

Hon'ble Supreme Court of India in while deciding Criminal Appeal No.571 of 2021 titled 'Kumer Singh Vs. State of Rajasthan and another', held that where there is an unlawful assembly, and the victim has received injuries which are life threatening, merely on ground that an accused has been attributed danda blows, cannot be granted bail, on the said aspect itself especially where the presence of the said accused in the unlawful assembly is established wherein victim has received life threatening injuries. The relevant paragraph of the judgment of the Hon'ble Supreme Court of India in Kumer Singh's (supra), wherein, the bail granted to the accused in somewhat similar circumstances was cancelled, is as

under:-

“14. The submission on behalf of the accused that the accused were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly. There were 26 injuries found on the dead body of the deceased and 11 injuries on the injured Vikram Singh by blunt and sharp weapons. Therefore, merely because they were armed with lathis cannot be a ground to release them on bail, in the facts and circumstances of the case, more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC as well as Sections 147 and 148 of the IPC.”

The above observations of the Hon'ble Supreme Court of India are fully applicable in the present case as well wherein also, the Court below has granted the respondent/accused the concession of regular bail only on the ground that they were armed with a danda and inflicted injury with the same along with fist blows upon victim by ignoring the other relevant facts i.e. the injuries suffered by the victim, the stage of the investigation/trial and whether, the grant of bail will hamper the trial in any manner or not.

Even otherwise, while granting the concession of regular bail to the private respondents/accused, the Court below has totally ignored the fact that at the time when the concession of regular bail was extended to the private respondents/accused, even the investigation was not complete.

Though, the same is now complete but, the complainant/victims are yet to be

examined. The consideration has to be extended as to whether, keeping in view the facts and circumstances of this case, the grant of bail to accused will hamper the investigation/trial as the case may be or not, the consideration of the said aspect is totally missing while granting the concession of regular bail to the petitioner. Therefore, keeping in view the fact that the relevant aspects which need to be kept in mind while considering the prayer for the grant of bail are missing in the order extending concession of bail passed by the Court below, the said order, cannot be sustained in eyes of law.

Keeping in view the above, the orders passed by the trial Court granting bail to the private respondents, impugned in these two petitions, are set aside being perverse.

The private respondents are directed to surrender before the Court below within a period of ten days from today.

It is made clear that this Court is not expressing any opinion on the merits of the case and in case, the respondents file any bail application henceforth, the same will be decided on the merits of the same and the trial Court will not be influenced with regard to anything said in this Court while considering the said prayer.

(HARSIMRAN SINGH SETHI)

JUDGE

24.01.2022

rimpal

Whether speaking/reasoned
Whether Reportable :

Yes
No