

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

CRM-M-39641-2022 (O & M)

Date of decision: 07.09.2022

Pawan Bihari

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Balraj Gujjar, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petitions under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.392 dated 15.10.2021 under Sections 147, 148, 149, 323, 324, 302, 506 IPC and Sections 25, 54, 59 of the Arms Act, 1959 with Police Station Kotwali, District Faridabad, Haryana.

2. The present FIR came to be registered at the instance of Sunil who stated that his uncle Pram Pal was admitted at Safderjung Hospital, Delhi. He alongwith his nephew Shiva and Vishnu were taking food to his uncle when at around 11.30, near the wall of railway line, they saw some boys, namely, Nitin, Pawan/Bihari (the present petitioner), Krishan/Pakoda, Harsh/Bhanga and Rahul (since granted bail vide order dated 23.08.2022 passed in CRM-M-22718-2022, Annexure P-2). The said persons abused them (complainant-side). Thereafter, Krishan/Pakoda gave a knife blow on

received two injuries. Nitin attacked his nephew-Shiva with a knife who fell down. Pawan/Bihari, Rahul and Harsh attacked them (complainant-side) with stones. On their raising a noise, all the boys ran away from the spot. His (complainant's) elder brother, namely, Vinod got them admitted at BHK hospital, Faridabad where his nephew Shiva succumbed to his injuries.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Taking the allegations to be true, the petitioner has been attributed the role of throwing of stones and, in fact, nothing has been recovered from his possession. The fatal injury is attributed to his co-accused. Even otherwise, it was a sudden occurrence without any pre-meditation, therefore, it would be a matter of adjudication during trial as to the applicability of Sections 148 and 149 IPC. The petitioner is in custody since 16.10.2021 and none of the 20 prosecution witnesses has been examined which establishes that the trial is not likely to be concluded in the near future. He, thus, prays for the grant of regular bail.

4. The learned counsel for the State, on the other hand, contends that the petitioner is a part of an unlawful assembly and as such, he does not deserve the concession of regular bail. He, however, does not dispute that the fatal injury has been attributed to the co-accused of the petitioner and the allegation against the petitioner is only to the extent that he alongwith his co-accused threw stones at the complainant party.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the petitioner is in custody since 16.10.2021 and none of the 20 prosecution witnesses has been examined so far. The fatal injury on the person of the deceased-Shiva has not been attributed to the petitioner but he has been attributed only the role of throwing stones

namely, Rahul has already been granted the concession by this Court vide order dated 23.08.2022 (Annexure P-2). It would be a matter of adjudication during trial as to the applicability of Sections 148 and 149 IPC.

7. Thus, keeping in view the aforesaid facts, the further incarceration of the petitioner is not required. Therefore, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Pawan Bihari is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

(JASJIT SINGH BEDI)
JUDGE

September 07, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No