

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

214

**CRM-M-40034-2022
Decided on : 10.10.2022**

Sunny

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Akashdeep Singh, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Sunny, who has been booked for having committed the offence punishable under Sections 148, 149, 302 of IPC (Sections 148, 149 of IPC deleted later on and Sections 323, 324, 201, 34 of IPC and Section 25 of the Arms Act, added later on), registered at Police Station Purani Sabzi Mandi, Rohtak, District Rohtak, during the pendency of trial.

At the outset, learned counsel for the petitioner has produced in Court today photocopies of the statements of prosecution witnesses namely Vishal @ Shiva and Rajesh, which are taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

While referring the contents of FIR, learned counsel for the petitioner submits that role of stabbing to Kamesh (deceased in the present case) is attributed to Rahul @ Nali, who is brother of the present petitioner, and the petitioner along with others, is attributed with the role of catching hold of the deceased. He further refers to the statement of Vishal @ Shiva,

who is an injured eyewitness, recorded under Section 161 Cr.PC, as per which, petitioner is stated to have arrived later in time on the spot. While referring to the statement of said injured eyewitness namely Vishal @ Shiva, deposed during the course of evidence before the trial court, learned counsel for the petitioner refers to the attributed role, wherein, it is recorded that Sunny (present petitioner), brother of Rahul @ Nali also came there and started quarreling with us.

Learned counsel for the petitioner further argues that by reading said part of the statement, petitioner reached the spot at the time when the dispute had already arisen. He further argues that once the petitioner is not alleged to be armed with any weapon and as per prosecution version also, he has reached on the spot on being called by his brother Rahul @ Nali on start of the quarrel, the question of sharing of common intention would be decided by the trial Court at the fag end of the trial.

Learned counsel further submits that petitioner is inside jail for more than 01 year & 04 months and only 07 prosecution witnesses, out of the total 28 witnesses, have been examined so far, therefore, conclusion of trial is not possible in the near future. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

On the contrary, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner, submits that present petitioner is also alleged to be present on the spot in all the statements of the witnesses. He further submits that a young boy, who is son of the complainant, has been murdered by the brother of the present petitioner, by giving knife injuries in the presence of the petitioner. Therefore, it cannot be

argued that he was not sharing common intention with his brother. In the circumstances, petitioner does not deserve the concession of regular bail.

Be that it may, I have considered the submissions of both the sides and perused the record available before me. Admittedly, at no stage in any of the statements petitioner is alleged to be armed with any weapon or of causing any injury to the injured or the deceased. Undoubtedly, question of sharing 'common-intention' would be seen by the trial Court at the final stage of the trial. One more fact is also noticed by this Court that even as per the prosecution version, petitioner reached on the spot without any weapon on being called by his brother Rahul @ Nali.

It is also a noticeable fact that petitioner is inside jail since 09.06.2021 and about 19 prosecution witnesses are yet to be examined. Moreover, material witnesses i.e. injured Vishal @ Shiva and complainant Rajesh have already been examined. Therefore, chances of tampering with the evidence or influencing the witnesses in normal course would not be there.

In view of the aforementioned facts and circumstances of the case and the submissions made by the parties, the prayer made in the present petition is **allowed**. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence the prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression of opinion on the facts of the case and the Trial Court is expected

to decide the case on the basis of complete evidence available on record.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 10, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*