

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-40089-2022

Date of Decision:-29.09.2022

Pradeep.

.....**Petitioner.**

Versus

State of Haryana.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Manish Soni, Advocate for the Petitioner.

Mr. Jaiteshwar Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under section 439 Cr.PC is for the grant of regular bail in case FIR No.223 dated 07.11.2021 under Sections 302 IPC registered at Police Station Sector 65, District Gurugram.

The brief facts of the case are that the statement of Jai Bharti wife of Vipin Malik deceased was recorded to the effect that her husband was a driver working at Sky On Apartment, Sector 60, Gurugram. On 06.11.2021 he had left his home for his duty on his motor cycle and his mobile phone was switched off from 7.00 pm when she had last spoken to her husband. On 07.11.2021 at about 3.10 pm she got information that the dead body of her husband was lying in Sector 59, Gurugram in the gooseberries farm. On receipt of the said information she along with her brother reached the spot and saw that her husband Vipin Malik had received many injuries on his head. The sticks of the gooseberry tree were lying near the dead body and there was blood on the stick and blood had oozed from his head. She stated that her husband Vipin Malik had been killed by some unknown persons. During the course of investigation the present petitioner

came to be arrested on 09.11.2021.

The Counsel for the petitioner contends that as per the recovery memo four gooseberry sticks were found with blood stains on them on 07.11.2021 prior to the arrest of the petitioner on 09.11.2021. Along with the sticks a bag of the deceased containing a number of articles was also recovered from the spot. He contends that the subsequent recovery of a bloodstained stick from the petitioner is nothing but a padding with a view to inculcate the petitioner. In fact as per the FSL report while there were blood stains on the four sticks recovered from the spot, the stick recovered from the petitioner showed human blood on the *danda* to be inconclusive so far as the grouping of the blood was concerned. He further contends that the statement of PW-2 Aflatoon Bhamla was recorded and he has not supported the prosecution case. Similarly the statement of PW-3 was recorded who is stated to have produced the CCTV footage showing the petitioner last seen in the company of the deceased but the said witness has also turned hostile. He thus contends that there is absolutely no evidence available against the petitioner. Since the petitioner is in custody since 09.11.2021 and four witnesses out of 26 witnesses stand examined including the two main witnesses who have turned hostile, the further incarceration of the petitioner is not required.

The Counsel for the State on the other hand while referring to the reply dated 21.09.2022 submits that CCTV footage of the place of occurrence was obtained from the nearby liquor vend. The person seen in the company of the deceased was identified to be present petitioner. He was arrested and on his disclosure statement he got recovered the wooden *danda* and a motor cycle used by him to flee away from the place of occurrence. He also stated that the petitioner confessed to have burnt his bloodstained clothes and *chappal* worn by him at the time of occurrence. He further stated that the petitioner is involved in one other FIR under the Excise Act. He thus argues that the petitioner does not deserve the concession of bail though he admits that the two main witnesses have turned hostile.

I have heard counsel for both the sides at length.

Admittedly, two of the four prosecution witnesses have turned hostile. The said two witnesses are in fact the main prosecution witnesses against the petitioner. The petitioner is in custody since 09.11.2021 and as

many as 22 more prosecution witnesses are to be examined and, therefore, the trial is not likely to be concluded any time soon. Even otherwise the petitioner has clean antecedents other than one case under the Excise Act. Therefore, the further incarceration of the petitioner is not required.

Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Pradeep** son of **Sh. Sukhbir** is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

September 29, 2022
Vinay

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