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

CRM-M-41577-2022

Date of decision : 15.09.2022

Arun @ Baliya

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.142 dated 11.07.2020, under Sections 323, 307, 449, 302, 506 IPC and Section 25 of Arms Act, 1959, registered at Police Station Behal, District Bhiwani.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has not been named in the FIR, although, it has been alleged in the FIR that Sandeep, Mandeep, Tukhal and Manish came on the rooftop of the complainant's house along with 8-10 unknown persons. It is further submitted that the unknown persons have not been attributed any specific injury. It is submitted that out of the said 4 persons, 3 persons who had been attributed specific roles, including

Manish, Sandeep and Tukhal have been declared innocent and the same would show that version given in the FIR is not correct. It is further submitted that the petitioner has been implicated on the basis of the disclosure statement of Mandeep @ Baghri, which was recorded on 22.07.2020 and even as per the said statement, no specific injury has been attributed to the petitioner. Although, it is generally stated that the petitioner gave injuries with a stick to Virender, Surender, Dalbir and Parvesh. It is further submitted that the petitioner has been in custody since 22.7.2020 and till date, out of 24 witnesses, only one witness has been examined and an application under Section 319 Cr.P.C. has also been filed by the prosecution, which has been partly allowed and against the said order, revision has been filed in this High Court, which is pending and thus, the trial is likely to take time. It is further contended that the co-accused of the petitioner namely Deepak @ Bhondi and Yogesh @ Yogi have already been granted the concession of regular bail by this Court vide order dated 23.05.2022 passed in CRM-M-39831-2021 and other connected matter and that the case of the present petitioner is on a similar footing as that of the said co-accused persons.

Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that in the present case, apart from the one deceased, there are two persons Virender and Surender who have suffered injuries. It is further submitted that the injuries suffered by Surender and Virender have been declared to be dangerous to life. It is contended that the petitioner is

involved in one more case and recovery of one pistol, six live cartridges and one wooden stick have been effected from the present petitioner.

Learned counsel for the petitioner, in rebuttal to the abovesaid argument, has submitted that there is no gun shot injury in the present case and has relied upon the judgment passed by the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and others**; reported as **2012 (2) SCC 382**, to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. Reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

A perusal of the FIR would show that the petitioner is not named in the FIR. Seven persons were specifically named in the FIR, out of which, four persons namely Sandeep, Tukhal, Manish and Mandeep were stated to be present at the rooftop of the complainant's house, but during the course of investigation, three persons out of the said four persons i.e., Sandeep, Manish and Tukhal, were found to be innocent,

thus, causing a dent in the prosecution's case. Even the other three named persons i.e., Indrawati, Dhanpati and Santosh, who were stated to be close to the place of the incident, have also been found to be innocent during investigation. The petitioner is sought to be implicated on the basis of disclosure statement of accused Mandeep, which was recorded after a period of 11 days from the date of registration of the FIR. Even as per the statement of the said Mandeep @ Baghri, it has been stated that no specific injuries have been attributed to the present petitioner and it has been generally mentioned that the petitioner had given injuries with a stick to Virender, Surender, Dalbir and Parvesh. The petitioner is stated to be in custody since 22.07.2020 and out of 24 witnesses, only one witness has been examined and the prosecution had filed an application under Section 319 Cr.P.C., which has been partly allowed, and the said order has been challenged by filing a petition before the High Court and the same is pending and thus, the trial is likely to take time. The co-accused of the petitioner namely, Deepak @ Bhondi and Yogesh @ Yogi, have already been granted the concession of regular bail by this Court vide order dated 23.05.2022 passed in CRM-M-39831-2021 and other connected matter and that the case of the present petitioner is on a similar footing as that of the said co-accused persons.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, 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.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

15.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No