

(255) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43552-2022 (O&M)
Date of Decision: 16.11.2022

MAHINDER SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

Mr. Vijay Lath, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.270 dated 10.05.2021 (Annexure P-1) registered under Sections 148, 149, 323, 324, 307, 506 IPC, 1860 at Police Station Shahabad, District Kurukshetra.

2. The present FIR came to be registered at the instance of Nathi Ram son of Gian Singh who stated that he was a resident of village Bakana and an agriculturist. A fight had taken place between him and his uncle Maan Singh over the partition of land for which he had got registered an FIR No.254 dated 03.05.2019 at Police Station Shahabad proceeding of which were pending in Court. Due to this reason, Maan Singh and his family members were nursing a grudge against him. He had earlier moved an application in the office of the Superintendent of Police that his life was in

danger at their hands. On 09.05.2021 at about 09.30 AM, while he, his mother namely, Rajkali and his sons namely, Jaspreet and Ramandeep were working in their fields, at that time, his uncle Maan Singh son of Ram Singh, Subhash son of Maan Singh, Mahinder Singh (petitioner) son of Maan Singh, Paramjit wife of Rampal, Saroj Bala wife of Subhash Chand, Seeto Devi wife of Maan Singh, Vijeta daughter of Subhash Chand, Bhawna daughter of Subhash Chand, Pooja wife of Mahinder Singh and Jatin son of Karnail Singh residents of Bakana armed with *Lathis*, *Dandas*, *Gandasi* and a cutter came into his fields. They raised a *Lalkara* that he should not be spared. Immediately thereon, Subhash armed with a *Gandasi* gave a blow with it on his head on which he fell down. Maan Singh gave a *Lathi* blow on his hand, Jatin son of Karnail Singh gave a wooden *Lathi* blow on his arm, Paramjit wife of Rampal armed with a *Danda* gave blow on the head of his mother Rajkali, Saroj Bala wife of Subhash armed with a *Danda* gave a blow on the arm of his mother. Bhawna and Vijeta daughters of Subhash caught hold of his elder son Jaspreet while Seeto Devi wife of Maan Singh and Pooja Devi wife of Mahinder Singh (petitioner) gave *Lathi* blows to him. Mahinder Singh (petitioner) who was armed with a *Gandasi* in his hand gave a blow with it on the head of his younger son Ramandeep with an intention to kill him. Pooja wife of Mahinder Singh who was holding a *Danda* in her hand gave *Danda* blows on the shoulders of Ramandeep. On hearing their noise of 'Mar Diya Mar Diya' their neighbour Gulab Singh son of Prithvi Singh and Nathu Ram son of Barkha Ram came to the spot and thereafter, the assailants ran away with their respective weapons.

3. The learned counsel for the petitioner contends that all the four injured were medico-legally examined on 09.05.2021 and were discharged after few days. Maan Singh and the petitioner were arrested on 21.05.2021 and a *Danda* was recovered from Maan Singh along with a *Gandasi* from Mahinder Singh. From Subhash son of Maan Singh, a *Lathi* was recovered. As per the CT Scan of the head of Ramandeep which was done on 10.05.2021 no complications were found and it was categorically held that the type of injuries suffered by Ramandeep could not be stated to be dangerous to life. He contends that none of the other injured have received injuries, which were dangerous to life so as to attract the provisions of Section 307 IPC. Since the petitioner was in custody since 25.01.2021, the challan had been submitted and only 03 prosecution witnesses out of 17 had been examined, the further incarceration of the petitioner was not required as the Trial was not likely to be concluded anytime soon. Even otherwise, the petitioner had clean antecedents with no other case registered against him.

4. On the other hand, the learned State counsel contends that the petitioner is one of the main accused. He however, does not dispute the fact that as per the opinion of the doctor, the injury attributed to the petitioner on the head of Ramandeep was not found to be dangerous to life. He however, states that looking into the nature of the allegations and the manner in which the occurrence took place, the petitioner does not deserve the concession of regular bail, even though the petitioner has clean antecedents and only 03 out of the 17 prosecution witnesses have been examined.

5. Mr. Vijay Lath, Advocate has put in appearance on behalf of the complainant and has filed his Memorandum of Appearance. The same is

taken on record. While opposing the bail application, he contends that the present occurrence is an outcome of an earlier FIR got registered by the present complainant against a number of accused including the wife of the present petitioner. He contends that the seat of injury and the weapon of offence was required to be seen to establish as to whether an offence under Section 307 IPC was made out or not and merely because the injury suffered by Ramandeep was not stated to be dangerous to life as per the opinion (Annexure P-9) it did not mean that no offence under Section 307 IPC was made out. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Hari Mohan Mandal Versus State of Jharkhand, 2004(2) R.C.R. (Criminal) 700*, *Vasant Vithu Jadhav Versus State of Maharashtra, 2004(2) R.C.R. (Criminal) 200* and *Bipin Bihari Versus State of M.P., 2006(4) R.C.R. (Criminal) 463*.

6. I have heard the learned counsel for both the parties at length.

7. Undoubtedly, the petitioner has been in custody since 21.05.2021 and only 03 out of 17 prosecution witnesses have been examined so far. Therefore apparently, the Trial of the present case is not likely to be concluded anytime soon. Further, it is a family dispute between the two sides who are related to each other. As per the opinion of the doctor (Annexure P-9), the injury suffered by Ramandeep at the hands of the petitioner could not be stated to be dangerous to life. In the judgments (supra) it has been held that the intention to cause death would have to be determined not only on the basis of the nature of the injury suffered but also on the basis of the weapon used and the seat of injury. The proposition as set out in the judgments cannot be denied. However, it may be pertinent to mention here that the opinion

expressed in the said judgments was at the time of final adjudication of the Trial. In the present case, for the purposes of adjudication of the instant bail application, the nature of injury would undoubtedly be of some importance. Be that as it may, taking the allegations to be correct and the injury caused by the petitioner being, *prima facie*, one attracting Section 307 IPC, the attending facts and circumstances including the custody period undergone by the petitioner, his clean antecedents and the stage of Trial would also entitle the petitioner to the grant of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Mahinder Singh son of Shri Maan Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of the CJM/Duty Magistrate, concerned.

9. If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

16.11.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No