

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

Date of Decision:-05.08.2022

CRM-M-50552-2021

Manish minor (now major).

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

AND

CRM-M-27573-2022(O&M)

Mahipal @ Monti & Anr.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. S.K. Yadav, Advocate for the Petitioner
(in CRM-M-50552-2021).

Mr. Aditya Sanghi, Advocate for the Petitioners
(in CRM-M-27573-2022(O&M)).

Mr. Parveen Kumar Aggarwal, Deputy Advocate General,
Haryana.

JASJIT SINGH BEDI, J. (ORAL)

This order shall dispose of two bail petitions filed under Section 439 Cr.PC for grant of regular bail in case FIR No.347 dated 16.06.2019 (Annexure P-1) registered under Sections 148, 149, 323, 506 IPC (later on added Section 302, 325, 307, 120-B IPC registered at Police Station City Narnaul by **Manish** bearing CRM-M-50552-2021 and by **Mahipal @ Monti** and **Lokesh Kumar** bearing CRM-M-27573-2022.

The FIR came to be registered at the instance of Kunal son of

Late Sh. Sandeep Kumar who stated that on 15.06.2019 he had gone to the party of Vishnu Saini son of Rohtash Saini who was a friend of his brother Bhupesh. He returned from the party and went to sleep. At about 2'O clock Rohit, Neeraj son of Rohtash and Vinay son of Radhay Sham came to his house and disclosed to him that after the party some persons had come in a vehicle and on 3/ 4 motor cycles in which Shiv Dayal, Monu Pehalwal and Pankaj Gohra along with 10/15 other persons were travelling and gave *lathi* blows on head of his younger brother and his brother had been taken to Government Hospital, Narnaul. The complainant asked to accompany the aforementioned three boys. When he reached the hospital he saw that serious injuries had been suffered by his brother on the head because of which the doctor had referred his brother to a higher hospital. Thereafter he took his brother to NIMS Hospital, Jaipur where his treatment was going on.

After the registration of the FIR under Sections 148, 149, 323, 506 IPC, later on Section 307 IPC and 120-B IPC was added and after the death of the injured Bhupesh, Section 302 IPC was added on 25.06.2019.

The Counsel for the petitioner-Manish *inter alia* contends that petitioner was not named in the FIR but had been named in the disclosure statement of his co-accused Pankaj and even as per the said disclosure statement no specific injury had been attributed to him. He was a juvenile and was in custody since 21.06.2020 and was being tried by the Juvenile Justice Board. The statements of witnesses was also recorded one month after the occurrence and, therefore no reliance could be placed on the same. It is lastly contended that all the material prosecution witnesses have been examined and none of them have supported the case of the prosecution. Therefore, the petitioner deserves the concession of regular bail since he has been in custody since 21.06.2020.

The Counsel for the petitioners, namely, Mahipal @ Monti and Lokesh Kumar *inter alia* contends that Lokesh was in custody since 10.07.2020 whereas petitioner-Mahipal was in custody since 10.08.2020. He contends that version of the complainant is not the eye version account but is based on hearsay evidence. It is only later on 20.06.2019 that the complainant got recorded his supplementary statement. No test identification parade had been held and even the statements of other witnesses were recorded more than a month of the occurrence which creates

a doubt in the case of the prosecution. It is lastly contended that all the material witnesses stand examined and as the petitioners have been in custody since 10.08.2020 and 10.07.2020 respectively, they be granted the concession of regular bail.

The Counsel for the State has filed a reply in each of these cases. A perusal of the para 10 of the reply would reveal that 17 prosecution witnesses out of 32 have been examined during the trial. All the material prosecution witnesses i.e. Complainant-Kunal (PW-1), Mohit (PW-2), Vishnu (PW-3), Vinay (PW-4), Pawan (PW-5), Rohit (PW-6) and Parveen (PW-7) have been examined and they do not support the case of the prosecution and were therefore declared hostile by the trial Court. It is further mentioned in the reply that there is no other FIR pending against petitioner-Manish. So far as the petitioner Mahipal@ Monti is concerned he is not accused in any other FIR whereas Lokesh Kumar is accused in one more case FIR No.384 dated 4.7.2019 under Sections 363, 366-A IPC registered at P.S. City Narnaul.

The counsel for the State while placing reliance on the respective replies to these petitions contends that though the witnesses have turned hostile they do not deserve the concession of bail seeing the nature of allegations levelled against them.

I have heard learned Counsel for both the parties at length.

Admittedly, all the material witnesses have turned hostile. Petitioner-Manish has been in custody since 21.06.2020, Mahipal @ Monti since 10.08.2020 and Lokesh since 10.07.2020. They have undergone a significant period of custody. As the material witnesses have already been examined the question of threatening or intimidating the witnesses does not arise. The Hon'ble Supreme Court in "**Dr. Gokarakonda Naga Saibaba Versus State of Maharashtra, 2016(2) RCR (Criminal) 675**" and this Court in "**Devender Singh @ Devender Chhabra @ Tintu Versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016**" has held that grant of bail can be considered, where witnesses stand examined.

In view of the above, without commenting on the merits of the case, both the aforementioned petitions are allowed and the petitioner-**Manish** son of Sh. Jaipal @ Shamsher (in **CRM-M-50552-2021**) & petitioners-**Mahipal @ Monti** son of Sh. Surender Kumar and **Lokesh**

Kumar son of Sh. Gulab Singh (in CRM-M-27573-2022) are ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

Petitions stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 05, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>