

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-50774-2022

Date of decision : 07.12.2022

Maksoodan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Gautam Dutt, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

Mr.Kamal Deep Sehra, Advocate and
Mr.Amar Singh, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.148 dated 20.07.2019 registered under Section 148, 149, 323, 342, 506, 307 of the Indian Penal Code (302 IPC added later on) at Police Station Rozka Meo, District Nuh.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 24.07.2019 and the investigation is complete and the challan has already been presented and 6 witnesses out of 25 witnesses are yet to be examined and thus, the trial is likely to take time and the petitioner is not involved in any other case and the petitioner is in fact a house wife and has clean antecedents. It is submitted that five persons from the side of the present petitioner were also injured and on a specific

suggestion, which has been given to PW-2 Kundan, complainant which

finds mention at pages 45 and 43 of the paper book, the said witness has admitted that Jaikam had taken the injured Akhtar (husband of the petitioner) and other members of the family to a hospital for medical treatment and medical examination. It is further submitted that a further perusal of the evidence of PW-2 Kundan complainant (recorded at page 47) would show that he has stated that the petitioner along with another lady was standing on the roof of the house which is at a height of 15 feet from the ground and it is from there that the petitioner is alleged to have thrown half a brick upon the head of the deceased-Naveen. It is stated that even in case the said version is taken to be true then also it is prima facie clear that the petitioner who is a house wife did not have the intention to kill said Naveen, who was an Advocate for Jamshed i.e., (husband of the petitioner) the opposite party and it is the said Jamshed who had a dispute with Akhtar. It is further stated that the incident had taken place close to the house of the present petitioner and a large number of persons had gathered there, thus, there was likelihood that a person may, in order to stop people from criminal trespassing into their house, throw a brick in order to avoid them from entering their house. It has been prayed that keeping in view the custody period of the petitioner, the petitioner be granted the concession of regular bail.

Learned State counsel as well as learned counsel for the complainant, on the other hand, have opposed the present petition for regular bail and have submitted that the present petitioner is the main accused in the present case and it has been specifically mentioned in the FIR and has also surfaced in the evidence of the eye witness-complainant that it was the petitioner who had thrown the brick from the roof top which hit

Naveen's head and said injury proved to be fatal on account of which Naveen died. It is further submitted that although, the main dispute was between Jamshed and Akhtar (husband of the petitioner) but since Naveen, Advocate was also siding with Jamshed, thus, there was intention in the mind of the petitioner to kill said Naveen.

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

The petitioner is a lady of 43 years of age and has been in custody since 24.07.2019 and is stated to be not involved in any other case, and out of 25 witnesses, 6 witnesses are yet to be examined and thereafter, statement under Section 313 Cr.P.C. and even the defence evidence has to be led, thus, the trial is likely to take some time to conclude. It is the case of the petitioner that five persons had been injured from the side of the petitioner regarding which, there is no explanation in the FIR and on the said aspect, reference has been made to the cross-examination of PW-2 Kundan (at page 45) who is the complainant in which, said PW-2 has admitted the fact that the husband of the petitioner i.e., Akhtar and other members of the family of the petitioner were taken to the hospital for medical treatment and medical examination by Jaikam. A further perusal of the cross-examination of PW-2 Kundan (at page 47) would show that at the roof of the house two ladies were standing, one of whom, was the petitioner and the said roof top was at a height of 15 feet from the ground and as per the case of the prosecution, the petitioner had thrown half a brick which hit the head of said Naveen. The incident had taken place close to the house of the petitioner. The argument of learned counsel for the petitioner to the effect that the petitioner has no intention to kill the deceased moreso, when

even as per the case of the prosecution, the main dispute is between Jamshed and Akhtar (husband of the petitioner) cannot be outrightly rejected and the said issue would be finally determined during the course of trial and this Court does not wish to give any final opinion so as to prejudice the case of either of the parties.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to her not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence 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 a final 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 petition.

(VIKAS BAHL)
JUDGE

December 07, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No