

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

**CRM-M No.58584 of 2022(O&M)
Date of Decision: 21.12.2022**

Joginder @ Rinku

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ajay Nain, Advocate and
Mr. Kartik, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. The petitioner seeks grant of regular bail in his fifth attempt under Section 439 Cr.P.C in case bearing FIR No.388 dated 16.09.2019 registered under Sections 323, 341, 506, 120-B, 147, 149 IPC (Sections 307 and 34 IPC added later on) at Police Station Azad Nagar, Hisar.

[2]. CRM-M No.14735 of 2021 was got dismissed as withdrawn on 16.07.2021. CRM-M No.36916 of 2021 was got

dismissed as withdrawn on 13.09.2021. CRM-M No.51908 of 2021 was dismissed vide order dated 24.01.2022 and CRM-M No.22288 of 2022 was got dismissed as withdrawn with the liberty to approach the Court of Sessions vide order dated 12.07.2022. Thereafter, the petitioner approached the Court of Sessions on 09.11.2022 and prayer for grant of regular bail was dismissed by the Additional Sessions Judge, Hisar vide order dated 11.11.2022.

[3]. The FIR was lodged by the complainant Jyoti with the allegations that on 15.09.2019, she along with her husband was going to the house of her brother-in-law and when they reached in front of the house of Sajjan in the street, then the accused, who were 16 in number including the petitioner restrained them on the way and started abusing them. On being objected, Dholiya, Deva, Lucky and Raj Kumar caught hold of her husband and the petitioner picked up a brick from the street and gave brick blow on the head of her husband. Other assailants gave kick, fist and slap blows to the husband of the complainant and also to the complainant. The petitioner was also having a weapon like article. The husband of the petitioner became unconscious on receiving head injury. The complainant raised alarm which attracted Praveen son of Billu at the spot. On seeing him coming, the assailants fled away from the spot while giving threats of life to the complainant party. Thereafter, the

neighbour of the complainant namely Baljeet arranged a vehicle and brought the husband of the complainant to Government Hospital, Hisar. Doctor gave the injured first aid and the complainant brought the injured to Sapra Hospital, Hisar, where Doctor admitted the husband of the complainant. With these allegations, the FIR came to be registered.

[4]. Learned counsel for the petitioner submits that the FIR was registered initially for the offences under Sections 323, 341, 506, 120-B, 147, 149 IPC, however, offences under Sections 307 and 34 IPC were added later on. Out of total 16 accused persons, 12 accused were exonerated by the investigating agency. The statement of the injured Baljeet was got recorded under Section 161 Cr.P.C after delay of two months i.e. on 17.11.2019. The challan was submitted on 19.08.2021 and charges were framed on 17.01.2022. The prosecution has examined only 2 witnesses out of 22 prosecution witnesses. On earlier occasions, the conduct of the petitioner was considered for passing order of dismissal and orders of withdrawal of the petitions.

[5]. As per allegations, the petitioner gave brick blow on the head of the husband of the complainant and other accused gave kick, fist and slap blows to her husband. Injury No.1 found on the person of injured was referred to surgical opinion and injury No.2 was advised for eye opinion. As per opinion of the

Doctor, injury No.1 was found to be grievous as well as dangerous to life. Both the injuries were declared as grievous in nature. Offence under Section 307 IPC was added. The first bail application filed before the Additional Sessions Judge was got dismissed as withdrawn on 18.11.2019. Thereafter, second bail application was filed before the same Court and the same was dismissed on merits on 11.12.2019. Third bail application was filed by labelling the same to be first bail application. Resultantly that was listed before some other Presiding Officer and bail was granted to the petitioner on merits vide order dated 24.02.2020. Complainant filed an application under Section 439(2) Cr.P.C for cancellation of bail and also for initiating legal proceedings against Dhano mother of the petitioner for filing wrong affidavit. The bail of the petitioner was cancelled vide order dated 25.02.2021 by observing that the petitioner through his mother has misled the Court by mentioning first bail application on the title of the petition, whereas it was third bail application after dismissal of second bail application on merits. In the event of mentioning third bail application on the title of the application, the same would have been listed before the same Presiding Officer, who had earlier dismissed the bail application. As a result of the aforesaid, the petitioner succeeded in getting the third bail application listed before some other Presiding Officer, resulted in grant of bail.

[6]. In view of conduct of the petitioner, which was exhibited through his mother, the bail was rejected or withdrawn on earlier occasions. The petitioner remained in custody from 05.10.2019 to 24.02.2020 and from 25.02.2021 till date. As of now, the petitioner has undergone period of 2 years, 2 months and 17 days of incarceration. Praveen son of Billu has been examined as PW-1. The witness has not supported the case of the prosecution and has been declared as hostile. His testimony would be subject to judicial scrutiny by the trial Court. Cross-examination of PW-2 (complainant) was deferred. The application under Section 319 Cr.P.C was filed, which was dismissed by the trial Court. Out of total 16 accused person, 12 accused were declared as innocent and out of remaining 4 accused, 3 accused have been granted bail. The petitioner is the only accused, who is in custody for the last 2 years, 2 months and 17 days. Only 2 witnesses have been examined out of total 22 prosecution witnesses.

[7]. Learned State counsel, however, opposed the bail on the ground of conduct of the petitioner.

[8]. Having considered the material on record, I find that for the conduct of the petitioner in securing bail at one point of time from the Court of Additional Sessions Judge, Hisar, the petitioner has adequately suffered. The case shall be finally tried by the trial Court on merits in view of material to be brought

on record by the parties.

[9]. Keeping in view the facts and circumstances of the case, particularly the period for which the petitioner remained in custody and the stage of the trial in which the alleged eye-witness Praveen has not supported the prosecution case and has been declared hostile, I deem it appropriate to grant regular bail to the petitioner without meaning anything on merits of the case.

[10]. In view of above, this petition is allowed. The petitioner is directed to be released on regular bail subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

[11]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

21.12.2022

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No