

CRM-M-4158-2023 and
CRM-M-13209-2023(O&M)

2023:PHHC:156028

113+221 (2 cases)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1.

CRM-M-4158-2023

Gurdeep @ Gogi

... Petitioner

Versus

The State of Haryana

.. Respondent

2.

CRM-M-13209-2023(O&M)

Aman

... Petitioner

Versus

The State of Haryana

.. Respondent

Date of Decision:-06.12.2023

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Vinod Ghai, Sr.Advocate with
Mr.Arnab Ghai, Advocate,
Mr.Amritpal Singh Maan, Advocate and
Mr.Sanpreet Sandhu, Advocate
for the petitioner (s) in both cases.

Mr.Ramender Singh Chauhan, AAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

CRM-51306-2023 in
CRM-M-13209-2023

Application is allowed, as prayed for.

Annexures P10 to P24 are taken on record.

CRM-M-4158-2023 and
CRM-M-13209-2023

1. This order shall dispose of **CRM-M-4158-2023** titled as ‘Gurdeep @ Gogi Versus The State of Haryana’ and **CRM-M-13209-2023** titled as ‘Aman Versus The State of Haryana’ as both the petitioners are accused in the same criminal case and have approached this Court by way of separate petitions under Section 439 Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
74	20.05.2020	Sadhaura, District Yamuna Nagar	302, 148, 149 IPC and Sections 10 3(1)(X) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”). Charge framed under Section 302/34 IPC and Sections 3(2)(V) of SC/ST Act.

2. For the sake of convenience, facts are being taken from **CRM-M-13209-2023**.

3. Case of the prosecution is that FIR, Annexure P1, has been registered on the statement of Ram Karan wherein he has stated that at about 10:30 a.m., his son Ankush received a phone call and left his house along with his friends. At about 4:00 p.m., he received information that his son Ankush had received injuries in a fight in the village and is being taken to Civil Hospital, Jagadhri for treatment. When he reached the hospital he came to know from Ajay Kumar that he had called Ankush in the morning as he had an altercation with Rishi Pal and his family members a night before. He

also told that when Ankush, Ajay and their other friends were near the house of Rishi Pal, then Vikrant @ Monu hit Ankush on his head with an axe. Rajat, Aman (petitioner in **CRM-M-13209-2023**), Gurdeep @ Gogi (petitioner in **CRM-M-4158-2023**) and their family members also attacked the boys. He was told that Ajay and other boys ran away from the spot leaving Ankush behind in an injured state. After identifying the dead body of Ankush, he requested that action be taken against the accused.

4. Learned Senior Counsel urges that deceased along with his friends came to take revenge and pelted Ram Parkash's house with stones and brick bats, which were found at the place of occurrence by the investigating team. Ram Parkash was injured and a cross – FIR was registered, which is being tried with the present proceedings. He submits that although initially after concluding the investigation, challan was presented for offence of murder but a Special Investigation Team was constituted and after recording statements and collecting other material, fresh challan was presented under Section 304 IPC besides other offences. He submits that after consideration, the trial Court framed charge under Sections 302/34 IPC as also for offences under SC/ST Act. He has made a detailed reference to the statements of Ajay and Shubham recorded under Section 161 Cr.P.C. to argue that although they had attributed the axe blow to Gurdeep but in their testimony when they appeared as PW6 and PW11, respectively, they have changed their version and have attributed the same injury to Vikrant and Aman has been accused of stabbing Ankush. He submits that the recovery of sharp edged weapon has not been effected from Aman and rather he was found to

be in possession of a wooden stick. Still further, by referring to the testimony of Ram Karan, complainant, father of the deceased, he submits that he has presented a totally different version. Counsel submits that the first petition preferred by Aman was rejected by this Court on 08.09.2021 as no prosecution witness had been examined. Counsel contends that the offence as enumerated under SC/ST Act are not made out against the petitioners. Counsel submits that three material prosecution witnesses i.e. the complainant and two friends of the deceased have been examined and the petitioners, who are in custody since 30.01.2021 and 24.05.2020, respectively, deserve to be enlarged on bail.

5. *Per contra*, State counsel upon instructions from ASI Tarsem has opposed both the petitions and has argued that there are specific allegations against both the petitioners of causing injuries resulting in loss of a young life. He has made a reference to the postmortem report of the deceased. He asserts that the allegations levelled against the petitioners are serious and the petitions deserve to be declined. Custody certificates of both the petitioners have been filed by the State counsel, which are taken on record. He could not dispute the examination of vital prosecution witnesses.

6. I have considered the respective submissions of counsel for the parties.

7. It is a case of version and cross-version. As to which of the two sides was the aggressor would be debated upon and determined by the Trial Court on the basis of evidence produced before it. There is not only an improvement in the deposition of material witnesses, but their testimony is

at variance. The role ascribed to the petitioners would remain a subject matter of debate. Both the petitioners are in detention for the last more than 34 and 44 months, respectively and enjoy clean antecedents. Vital prosecution witnesses have been examined, although prosecution is yet to examine 20 more witnesses. The trial is likely to take time to conclude. This Court is therefore *prima facie* of the view that the petitioners deserve to be enlarged on bail.

8. Without adverting to the merits or demerits of the arguments addressed, petitions are allowed. Petitioners are ordered to be released on bail, on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.

9. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

06.12.2023
Brij

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No