

**101+207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-4564-2023 (O&M)

Date of decision : 08.11.2023

Rashid

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Kunal Dawar, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

CRM-41343-2023

Application is allowed as prayed for.

Annexure P-10 is taken on record.

CRM-M-4564-2023

Petitioner has approached this Court by way of present second petition praying for grant of regular bail in case FIR No.181 dated 10.04.2022, under Sections 148, 149, 323, 506, 452, 427, 354-A of IPC, 1860 (challan presented under Sections 148, 149, 323, 506, 452, 427, 302, 120-B, 354-B, 34 of IPC), registered at Police Station Dabua, Faridabad, Haryana.

Adumbrated facts of the case that the police recorded statement of Nargish wife of Samim. It was alleged that on 07.04.2022 at about 10:30 A.M., she went to fetch water where Jubair followed her finding her alone. He embraced her from behind. On raising hue and cry by her, her brother-in-law Dilsad, husband Shamim Ahmad and accused Khalid came to the spot. All the accused attacked them with lathis, dandas and rods. Out of

fear, they rushed towards their house and the accused followed them. Thereafter, Nijam gave a rod blow on the stomach of Dilsad and Rajan inflicted injuries on his left hand. Shahrukh gave rod blow on his hands and stomach. She further alleged that all the accused inflicted injuries to her husband Shamim Ahmad. The ladies from the accused side namely, Juli and Saraiya also inflicted injuries to her sister-in-law Shakila and their motorcycle was also damaged. It was alleged that Ikram, Inam, Haji Rashid and Insaf in connivance with other accused hatched the conspiracy and hence, co-accused opened the murderous attack on them. Request was made to take legal action. The injured Dilsad was shifted to the Hospital where he succumbed to the injuries on 11.04.2022 and thus, offence under Section 302 of IPC was also added. On the basis of the statement, a formal FIR was registered and investigation commenced. The postmortem of the dead body was conducted on 11.04.2022. Petitioner was arrested on 17.04.2022. He approached the Court of learned Additional Sessions Judge, Faridabad praying for grant of regular bail. However, after hearing counsel for the parties, same was declined by learned Additional Sessions Judge vide order dated 15.07.2022. Aggrieved by the same, petitioner on the earlier occasion approached this Court by way of filing CRM-M-34210-2022. However, the same was allowed to be dismissed as withdrawn vide order dated 29.09.2022. Hence, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the occurrence in this case as alleged has taken place on 07.04.2022 whereas, the FIR was lodged after three days i.e. on 10.04.2022. He submits that there is no explanation given regarding the delay occurred in lodging the FIR. He submits that on the behest of petitioner's side, the cross case was

registered by way of FIR No.183 dated 10.04.2022. He submits that the petitioner before this Court is 75 years old who has been intentionally and malafidely named in the FIR with the allegation that he hatched the conspiracy in opening the attacked on the complainant's side. He submits that as is evident, neither the petitioner was armed with any weapon nor he has committed any overt act in committing any offence. He submits that the cross-case registered by the petitioner's side was clandestinely cancelled by the investigating agency and thus, the petitioner's side had filed a complaint which is pending adjudication before the trial Court. He submits that two sons and three grand-sons of the petitioner are already behind bars. It is submitted that the petitioner has no criminal antecedents and till date only investigation is complete and charges are framed but no witness has been examined by the prosecution. He submits that in the facts and circumstances of the case, petitioner deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that the presence of the petitioner is duly established when the cross-case has admittedly been filed by the petitioner's side. She has submitted that the co-accused in this case are the sons and grand-sons of the petitioner with whom the petitioner hatched the conspiracy. It is submitted that in all there are 29 prosecution witnesses, however, none has been examined so far. She, on instructions from SI Subhash Chand, Faridabad, submits that petitioner is not involved in any other case.

I have heard counsel for the parties and perused the record. Evidently, the occurrence in question has taken place on 07.04.2022. FIR has been registered on 10.04.2022. The postmortem of the injured Dilsad who succumbed to the injuries on 11.04.2022 thus, the offence under

Section 302 IPC was added. As per case of prosecution, neither the petitioner was armed with any weapon nor he has caused any injury to the deceased or any other person. There is nothing on record to show that the petitioner is involved in any other case. Investigation is complete and challan is also presented.

The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

08.11.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No