

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

CRM-M-8774-2023

Date of decision: 27.04.2023

Anil and anotherPetitioners

versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yogesh Goel, Advocate
for the petitioners.

Mr. Amit Aggarwal, DAG, Haryana.

SANDEEP MOUDGIL, J. (ORAL)

This instant petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.409 dated 13.07.2022 under Sections 323/325/307/506/34 of IPC registered at Police Station Ghannaur, District Sonapat.

The contents of the FIR are just and necessary to be read herein below:-

“To SHO Sahib P.S. Gannaur Sir, it is requested that I GAUTAM MALIK S/o Sh. Hukam Chand am resident of Village Mahra District Sonapat. We are two brothers and I am the elder one and working as a Guest teacher. My father has taken a land of about 2 Acres at Village Atayal P.S. Gannaur, Sonapat. On 10.07.2022 at about 5-6 P.M., I and my father Hakum Chand had gone to see and work in the land which we have taken at Village Atayal. As soon as we reached the Khotha constructed on our land and opened the lock where Sunil and Anil S/o Jasmat R/o Atayal were working in their fields. On seeing us Sunil and Anil started abusing and when I asked them about the reason for abusing then they said that they will teach us a lesson for purchasing Land of their Bua and said that today they will not let us go alive. On saying this, Anil, who was armed with KASSI gave a blow on my head from behind and when I turned, Sunil gave KASSI blow from front side on my head, with an intention to kill me. When my father tried to protect me then Sunil while saying that today they will finish both of us and gave a KASSI blow on my father from the front side, with an intention to kill. We both were bleeding and fell down on the ground. Sunil and Anil caused injuries when we were lying on the ground and saying that they will

end your chapter. Some co-villagers, who were working in nearby farms came, and on seeing them, they fled away by threatening us for dire consequences. The neighbors around the fields took us to Government Hospital, Gannaur for treatment and my father was got admitted at Delhi due to serious injuries. Thereafter on the receipt of information about the fight, my family members came to Gannaur Hospital and I was also taken to Santom Hospital in Delhi due to some serious injuries and till date I was unconscious. Sunil and Anil have inflicted injuries with an intention to kill us therefore, legal action be taken against both of them and justice be provided to us. Today after gaining my conscious, I have given my application. Strict actions be taken against the culprits. SD/- GAUTAM MALIK. Applicant Gautam Malik S/o Sh. Hukam Chand Village Mahra, Sonipat 9050000264 dated 13.07.2022. Sir, I Hukam Chand S/o Late Sh. PrabhuDayal am resident of Village Mahra, Sonipat and I endorsed Complaint submitted by my son Gautam Malik and want strict action against culprits. SD Hukam Chand 13.07.2022 Police proceedings : On 10.07.2022 at about 7:20 PM an information was received at Police Station that injured Gautam Malik S/o Sh. Hukam Chand R/o Mahra District Sonapat Village Atalya P.S. Gannaur has been referred from CHC Gannaur to PGIMS Khanpur due to quarrel occurred in the fields. IO be sent for action, upon which I ASI Mayy Singh along with HC Jasbir2050/SPT reached CHC Gannaur and obtained RUKKA and MLR No. RC/277/GNR/2022 dated 10.07.2022 of Gautam Malik from Doctor in which Doctor Sahib has shown total 7 injuries. Injury No. 1,2& 3 ADV. ORTHO OPINION of K/U/O/BLUNT, In injury No. 4 ADVISE ORTHO AND SURGEON OPINION K/U/O BLUNT, In injury No. 6 HEAD INJURY ADVISE SURGEON OPINION K/U/O BLUNT, In injury No. 7 HEAD INJURY SURGEON OPINION K/U/O BLUNT has been mentioned. I ASI with HC reached PGIMS Khanpur for recording statement of injured Gautam Malik, where I presented an application before Doctor Sahib for recording statement of injured Gautam Malik upon which Doctor Sahib stated the fact that the injured Gautam Malik is not admitted. Upon inquiry about the said injured Gautam Malik was found to be admitted in Santom Hospital of Delhi. On 11.07.2022 at about 12:30 AM I ASI along with HC, after reaching Santom Hospital, obtained copy of MLR No. 957/22 dated 10.07.2022 of Injured Hukam Chand from Doctor Sahib in which Doctor Sahib has shown 5 injuries. I ASI submitted a written application to Doctor Sahib for obtaining statements of injured Hukam Singh and Gautam Malik, upon which Doctor Sahib declared both Injured persons unfit for statement. The representative of injured persons namely Vinod S/o Satbir R/o Mahra was found present near the Injured person in the hospital who gave in writing to me ASI, that he is not aware about the incident and will inform as and when his brother and Uncle will come in senses. On 12.07.2022 the representative of injured persons namely Sandeep Malik made a contact from his Mobile No. 9050000708, with me ASI for recording of statement of injured then Sandeep Malik informed that his brother Gautam Malik and Uncle Hukam Chand have not gained conscious as yet and he will inform me as and when they will come in senses. On 13.07.2022 I ASI along with HC Jasbir 2050/SPT reached Santom Hospital Delhi for recording statements of injured persons and submitted written application to the Doctor Sahib for recording statements of injured persons on which Doctor Sahib declared injured persons fit for statement. Injured Gautam Malik submitted the said

written application before me ASI which was endorsed by his injured father Hukam Chand. From the contents of application, MLR and having found prima facie offence U/s 323/307/506/34 IPC, application was sent to the Police Station thorough HC Jasbir Singh. After registration of case, FIR No be informed. Special reports be sent to the officials. I ASI along with representative of injured left for place of incident. Today Santom Hospital Delhi, Sd/- Vikas PS Ghillaur Dated 13.07.2022 at 06:15 PM.”

Learned counsel for the petitioners has brought attention of the aforesaid contents of the FIR, role attributed to the present petitioners having given them blow with *kassi* in an FIR got registered on 13.07.2022 at 09:47 P.M. against the occurrence which took place on 10.07.2022 alleging the said injuries to be dangerous to life particularly invoking Section 307 IPC.

It is submitted by learned counsel for the petitioners at the instance of aforesaid facts that the instant FIR is absolutely false and used as a counter-blast to another FIR No.404 dated 10.07.2022 which has lodged at 11:57 P.M. by mother of the petitioners against the complainant in the instant FIR, namely, Gautam Malik and his father Hukam Chand (Annexure P-3).

Learned counsel for the petitioners Mr. Yogesh Goel has also referred to the proceedings culminated into challan while completing the investigation and in the final report under Section 173 Cr.P.C. that the medical examination on the alleged injuries suffered by the complainant in the instant FIR was conducted on 11.10.2022 for the first time i.e. after more than three months of the alleged occurrence. Even the opinion given by doctor after three months of the alleged injuries is not conclusive to whom the weapons have been shown and all these weapons are blunt, wherein, it has been opined by the doctor that all the injuries No.1 to 7 cannot be commented upon to have been made by the weapons shown as A and B by the prosecution. It is the contention of the petitioners that all the aforesaid sequence of events as narrated in the

instant FIR raises serious doubt to the prosecution's case and petitioners have already suffered custody of approximately eight months by now and, therefore, is entitled for concession of regular bail.

The learned State counsel on the other hand has produced the custody certificate which is taken on record. Perusal of the same shows that the petitioners have faced incarceration of 07 months and 26 days and not involved in any other case showing their neat and clean antecedents. However, the learned State counsel has made valiant attempt to bring home the guilt of the petitioners *prima facie* to deny the concession of regular bail asserting that the injuries were dangerous to life as injuries No.6 & 7 had been given on head by *kassi* as has been specifically alleged in the FIR *qua* the petitioners.

Be that as it may, the arguments raised by the learned State counsel are of no merit in the light of the fact that there is every scope left out with regard to the injuries being questionable in the light of the fact that alleged occurrence took place on 10.07.2022; whereas, the FIR was lodged three days thereafter on 13.07.2022 probably as a counter-blast to the FIR No.0404 dated 10.07.2022 with the same police station at the behest of mother of the petitioners alleging the case of molestation and outraging the modesty of mother of the petitioners. It is on that pretext the instant FIR has been lodged wherein medical opinion has also been taken after three months of the occurrence to which there is no explanation available even on perusal of the final report under Section 173 Cr.P.C. which has been produced before this Court by him.

Considering the aforesaid facts in totality, there is serious doubt in the case of the prosecution and in that eventuality, the petitioners cannot be

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allowed to remain behind the bars for an unlimited period pertaining to his life and liberty given under Article 21 of the Constitution of India.

Petition is allowed. Both the petitioners are directed to be released on bail on furnishing their bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

27.04.2023

Neha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No