

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

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CRM-M No.10674 of 2023

Date of Decision : 02.06.2023

Nitin alias Nikky Kabbadi

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prateek Rathee, Advocate for the petitioner.

Mr. Saurabh Girdhar, AAG Haryana.

ALKA SARIN, J. (Oral)

1. This is the fifth petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.228 dated 30.05.2019 under Sections 148, 149, 323 and 302 of the Indian Penal Code, 1860 registered at Police Station Rajendra Park, District Gurugram (Haryana).

2. First petition filed by the petitioner being CRM-M-15814-2020 was dismissed as withdrawn on 08.07.2020. Second petition being CRM-M-32985-2020 preferred by the petitioner for grant of regular bail was dismissed by this Court vide a detailed order dated 30.10.2020. Third petition filed by the petitioner being CRM-M-22761-2021 was dismissed as withdrawn by this Court vide order dated 27.09.2021. Fourth petition being CRM-M-9949-2022 was dismissed vide a detailed order dated 30.08.2022.

3. The brief facts relevant to be noticed in the present petition are that on 23.05.2019 information was received in the Police Station from Police Control Room, Gurgaon regarding the admission of one Padam Singh in Shri Govind Hospital, Gurgaon due to injuries sustained by him in some physical altercation. The Investigating Officer reached the Hospital and collected the Medical Rukka along with MLR of the injured. However, it was opined that the injured was unfit to make a statement. On 24.05.2019 the parties informed HC Vinod that a compromise had been effected and DDR No.17 dated 25.05.2019 was recorded on the basis of the above said compromise. In the said compromise also it has been admitted by the present petitioner that they had a quarrel with the deceased Padam Singh. On 29.05.2019 the son of Padam Singh informed the Police that his father Padam Singh had succumbed to his injuries while undergoing treatment at Safdarjang Hospital, Delhi. Thereafter, the wife of the deceased filed a complaint stating therein that on 22.05.2019 she was cooking a meal at around 8:30 PM whereas her husband Padam Singh was watching television at home. Her younger son Krishan, aged 14 years, was standing outside. On hearing some noise, she and her husband went outside the house on which they found that the present petitioner Nitin @ Nikky and one Mithun were holding lathis in their hands on which the complainant intervened and asked Nikky as to why he was assaulting her son. Nikky (the present petitioner) signaled to his companions to beat the complainant and her husband on which they started beating them. Nikky (the present petitioner) inflicted a

danda blow on the head of the husband of the complainant due to which he fell down. He was taken to hospital on 23.05.2019 from where he was shifted to Safdarjang Hospital on 28.05.2019 as his condition deteriorated. He succumbed to his injuries on 29.05.2019 at around 3:00/4:00 PM. In the present case the wife of the deceased, who was also an author of the FIR, had appeared as witness No.3 and has supported the case of the prosecution.

4. Learned counsel for the petitioner would contend that the change in the circumstances since the dismissal of the fourth petition i.e. CRM-M-9949-2022 on 30.08.2022 is that the trial is progressing very slowly and that last year, in August 2022, out of 25 witnesses only 09 had been examined and till date out of 25 witnesses only 12 have been examined. It is further the contention that the petitioner has now been in custody for a period of approximately 04 years. Learned counsel for the petitioner would further contend that though there are other cases pending against the petitioner, however, he is on bail in all the said cases and in four other cases he stands acquitted. Learned counsel for the petitioner has further pointed out that the same stand is also fortified by the custody certificate filed by the State.

5. Learned counsel for the petitioner has further contended that merely on the basis of criminal antecedents the benefit of grant of bail to the petitioner in the present case cannot be rejected and in support of his contention he has relied upon judgments of the Hon'ble Supreme Court in the case of **Maulana Mohd. Amir Rashadi vs. State of U.P. & Anr. [2012**

(1) SCC 382] and Prabhakar Tewari Vs. State of Uttar Pradesh & Anr. [(2020) 11 SCC 648].

6. *Per contra* learned State counsel has contended that the petitioner is the prime accused in the present case and that the fatal injury has been attributed to the petitioner. He further states that the petitioner is a habitual offender and has a criminal background having many cases pending against him.

7. The petitioner in the present case has been in custody for over a period of 04 years. In the order dated 30.08.2022 passed in CRM-M-9949-2022, it had been noticed that out of 25 witnesses only 09 have been examined. Today, learned State counsel is not in a position to deny the fact that out of 25 witnesses now only 12 have been examined. Although it is stated that additionally three witnesses have been given up, however, the fact remains that since August 2022 only 3 witnesses have been examined. Though there are other cases pending against the petitioner, however, the same cannot be a ground for denial of bail especially keeping in view the long period of incarceration. It is also not a matter of dispute that earlier the parties had compromised the matter and their statements were also recorded and it had been admitted that there had been a quarrel between the petitioner and the deceased and that the deceased succumbed to his injuries while undergoing treatment in Safdarjang Hospital, Delhi and subsequently a complaint was lodged by the wife of the deceased.

8. Hon'ble Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (supra) has held as under :

“6. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Hon'ble Supreme Court in the case of **Prabhakar Tewari** (supra) has held as under :

“7. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of

such discretion to be improper. We accordingly sustain the order of the High Court granting bail.”

9. In view of the above, without commenting upon the merits of the case and keeping in view the fact that the petitioner has been in custody for a period of approximately 04 years as also that the trial is progressing in a very slow pace, I deem it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds with heavy surety to the satisfaction of Trial Court/Additional District Judge (Duty) concerned.

10. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

11. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

12. Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

02.06.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO