

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

211

CRM-M-10736-2023

Date of decision: 05.05.2023

GULAB**...Petitioner****VERSUS****STATE OF HARYANA****...Respondent****CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Vansh Malhotra, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

DEEPAK MANCHANDA, J.(ORAL)

The present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.421 dated 03.11.2020, under Sections 323, 307, 506 and 34 of IPC (Section 302 and 34 of IPC added later on), registered at Police Station Kaithal City, District Kaithal.

It is alleged that on 30.10.2020, Ram Parsad and father of complainant-Subhash (deceased) were going to the fields on the motorcycle bearing No. HR08 H-0235. Ram Parsad was driving the same and Subhash was pillion rider, when they reached near the under-bridge of Village Silla Khera, petitioner-Gulab passed through the way in a rash and negligent manner due to that they had a narrow escape and stopped their motorcycle. Deceased-Subhash asked the petitioner to drive the motorcycle carefully upon which the petitioner said that he would teach them a lesson for entangling with him and took iron rod from the truck parked nearby and called his friend Khushwinder Singh @ Khush and other two boys at the

spot to cause injuries to the deceased and Ram Parsad. Co-accused Khushwinder Singh @ Khush along with two boys reached at the spot having an iron-rod and wooden Bindas in their hands and gave beatings to the deceased and Ram Parsad. The petitioner gave the iron rod blow in the stomach of the deceased. After hearing noise, the passers-by gathered on the spot upon which the petitioner and co-accused ran away on their motorcycle along with their weapons.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as he has no role in the alleged occurrence, moreover, the present FIR has been lodged after unexplained delay of 04 days. He further contends that complainant-Anil Kumar (son of deceased) was not an eyewitness rather Ram Parsad being eye witness firstly got recorded his statement to the police whereby DDR No.27 dated 01.11.2020 was filed wherein initially neither the petitioner was named in the DDR nor any role was attributed to him but later on complainant added the name of the petitioner while lodging the FIR. Learned counsel also contends that deceased-Subhash was having some pre-existence medical problems in his stomach and had died due to having problems in intestine and lack of care and shifting him from one hospital to another against the advice of the doctors. Moreover, from the above facts and the circumstances of the case, no offence under Section 302 IPC is made out as there is no definite possibility of death rather it is a case of probability of death.

Learned counsel for the petitioner submits that PW-11 and PW-12, doctors of the two hospitals where deceased was taken after alleged incident, did not support the version of the FIR as it was disclosed to them

that deceased-Subhash had fallen from the bike. Learned counsel for the petitioner claims parity that co-accused Khushwinder Singh @ Khush who filed the regular bail application was allowed by Co-ordinate Bench of this Court vide order dated 09.01.2023 in CRM-M-4487-2022 (Annexure P-10).

Vide order dated 09.03.2023, State was directed to file reply as to how the role of the petitioner is distinguishable than that of the co-accused, who has already been granted bail by this Court vide order dated 09.01.2023 in CRM-M-4487-2022.

In pursuance to the same, reply dated 19.04.2023 was filed and learned State counsel has opposed the present bail application on the ground that the petitioner has inflicted injuries in the stomach of the father of the complainant with pointed side of the iron rod and due to said injury, the deceased expired and this fact has also been admitted by the petitioner in his disclosure statement dated 11.11.2020 annexed with reply as Annexure R-1. He further contends that as per the opinion of the Board of Doctors which was taken regarding injuries of the deceased with respect to the recovered weapon (iron rod) it was opined that ***“possibility of the cause of death (injury) mentioned in our post mortem report by this iron rod cannot be ruled out”*** and further submits that sufficient incriminating evidence came on record against the present petitioner and moreover out of 21 prosecution witnesses 13 witnesses have already been examined.

I have heard learned counsel for the parties.

The role of the petitioner is distinguishable from the co-accused who has already been granted bail by this Court vide order dated 09.01.2023 as the other co-accused has no specific injuries attributed causing death of

the deceased whereas, the role of the petitioner is that he is the only one who gave iron rod blows on the stomach of the deceased, which resulted in causing his death. Hence, the role of the petitioner cannot be equated with the other co-accused namely Khushwinder @ Khush and is distinguishable. Further trial Court has rejected the bail application vide order dated 17.02.2023 on the observation that prima facie there is active involvement of the petitioner in the commission of the alleged offence and the findings therein do not warrant any interference and the bail application of the petitioner was rightly rejected. Further the trial is at the fag end where out of total 21 prosecution witnesses 13 witnesses have already been examined.

In view of the same, I am not inclined to grant the concession of regular bail to the petitioner.

Accordingly, the present petition is dismissed.

May 05, 2023
nisha-II

(DEEPAK MANCHANDA)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No