

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

CRM-M-14568 of 2022(O&M)

Date of Decision: 01.03.2023

Sawan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Pankaj Bali, Advocate
For the petitioner.**

Mr. Vishal Kashyap, AAG Haryana.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 467 dated 05.08.2020, registered under Sections 148, 149, 201, 302, 323, 325 and 506 IPC at Police Station Assandh, District Karnal.

The allegations in nutshell are that on 05.08.2020 there was a function as per local rituals organized at Sato Peer Baba of village Khanda Kheri by co-accused Deepak. Complainant Mithun, his brother Ram Mehar (deceased) were also invited in the said function. From the side of co-accused Deepak, his friends Mohinder @ Babli, Pardeep @ Tona, Sawan Kumar (petitioner), Ajay Singh, Balinder and his relatives Naresh @ Choti, Rohit, Vicky and some other persons were also present there. At about 3/3:15 p.m. all of them were taking food, in the meanwhile co-accused Naresh @ Choti, Rohit, Vicky, Pardeep @ Tona, Sawan (petitioner), Mohinder, Ajay,

Balinder and Deepak started abusing Ram Mehar. Co-accused Naresh @ Choti took out a *binda* from his car and gave its blow on the head of Ram Mehar. Co-accused Deepak also gave *binda* blow on the right arm of Ram Mehar who fell on the ground. Then Mohinder, Rohit, Vicky, Pardeep, Sawan (petitioner), Ajay, Mahinder and Balinder caused injuries to Ram Mehar with *bindas* and *dandas*. When the complainant and his friend Vicky tried to save Ram Mehar, Pardeep @ Tona gave *binda* blow on his left arm while Deepak gave *binda* blow on his left wrist. Other people who were present at the spot made efforts to rescue Ram Mehar and his brother from the clutches of the accused persons, on which the assailants fled away from there and later on Ram Mehar died in Government Hospital, Assandh.

The counsel for the petitioner, *inter alia*, contends that the petitioner is in custody for the last 02 years and 01 month and during investigation only one *danda* was recovered at his instance. The counsel for the petitioner further submits that no specific injury is attributed to the petitioner and as per the allegations recorded in the FIR, it was co-accused Naresh @ Choti who gave *binda* blow on the head of the deceased. The counsel for the petitioner further submits that as per post mortem report, except for one head injury, no other injury was found on the dead body of deceased Ram Mehar and that in the post-mortem report it has been specifically recorded that the cause of death is head injury which was ante mortem in nature. The counsel for the petitioner further submits that the trial is not progressing ahead as 22 more witnesses remain to be examined on behalf of prosecution. The counsel for the petitioner further submits that during trial prosecution has examined injured complainant Mithun and two other eye-witnesses. That the complainant while appearing in the witness

box reiterated the allegations made in the FIR as per which no specific injury is attributed to the petitioner. That the complainant in his deposition clearly stated that co-accused Naresh @ Choti gave heavy *danda* blow in the head of his brother Ram Mehar. The counsel for the petitioner further submits that the other two eye witnesses namely, Vicky and Surender failed to support the case of the prosecution. The copies of their testimonies are available on the record. The counsel for the petitioner further submits that in the given circumstances it will take considerable time for the trial to conclude and no fruitful purpose is going to be served by keeping the petitioner in custody. So, prayer is made that the petitioner be released on bail.

The present petition is opposed by the State counsel who submits that all the accused including the petitioner are named in the FIR and at the time of occurrence, the petitioner was armed with *danda* with which he caused injuries to the deceased. The State counsel further submits that the petitioner was the member of the unlawful assembly which attacked Ram Mehar and complainant Mithun as a result of which Ram Mehar died. The State counsel further submits that the trial is going on and only 04 witnesses are examined on behalf of the prosecution. However, the State counsel has not disputed the fact that the complainant and two other eye witnesses are examined during the trial, out of which only complainant has supported the case of the prosecution. The State counsel has also not disputed the fact that the petitioner is in custody for the last more than 02 years and 01 month.

I have considered the submissions made by counsel for the parties.

Admittedly, the petitioner is named in the FIR but no specific injury has been attributed to him and as per the allegations he was armed with *danda*, which he got recovered after his arrest. Head injury is specifically attributed to Naresh @ Choti. The petitioner is in custody for the last more than 02 years and 01 month and the trial is going on but till date only 04 witnesses are examined out of total 26 witnesses on behalf of the prosecution. The complainant and two other eye witnesses are already examined, out of which only complainant has supported the prosecution version, wherein also he specifically attributed head injury to co-accused Naresh @ Choti and has not specified about any particular injury being caused by the petitioner. As per the post mortem report, whose copy has been furnished by the counsel for the petitioner, Ram Mehar died on account of the head injury. The exact culpability of the petitioner will be established only at the time of final disposal of the case by the trial Court. So, no purpose will be served by prolonging the judicial custody of the petitioner.

Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

01.03.2023

Jiten

**(KARAMJIT SINGH)
JUDGE****Whether speaking/reasoned : Yes/No****Whether reportable : Yes/No**