

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-1027-2023(O&M)

Date of Decision:-28.11.2023

Tarun Kumar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Davneet Sangwan, Advocate for the Petitioner.

Mr. Kanwar Sanjeev Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The present revision has been preferred against the order dated 03.03.2023 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhari dismissing the criminal appeal filed by the petitioner against the order dated 06.01.2022 passed by Principal Magistrate, Juvenile Justice Board, Jagadhari seeking regular bail in case FIR No.750 dated 11.09.2021 under Sections 120-B, 201, 302 IPC registered at Police Station City Yamuna Nagar.

2. The instant FIR came to be registered at the instance of Shivali Sharma who stated that he had younger brother by the name of Surya. A Ganesh Utsav was organized every year on behalf of the Surya Club and even that year a Pandal was to be set up near the gate of Guru Gobind Singh Institute. On 10.09.2021 he (complainant), his brother Surya and younger brother Krishna @ Boxer were showing the location where the tent was to be put up for the Ganesh Utsav to the tent man. In the meantime, 5/ 7 motor cycles with 2/3 persons on each motor cycle totalling about 15/20 boys came to the spot with swords, iron rods wrapped around with barbed wire and empty glass bottles. All the accused attacked his brother Surya with their

respective weapons. He (complainant) and his younger brother Krishna @ Boxer hid there in order to save their lives. Out of the boys who were beating Surya, he (complainant) had identified Akshit Garg, Shanky, Shiva, Ashu Pagwal, Ganni Mehra, Nitin Mehra Parvej and Shahrukh. He could identify the other boys, if they came in front of him. Harsh and Akshit gave sword blows on the head of Surya whereas Ashu Gujjar, Ganni Mehra, Nitin Mehra, Shanky, Shiva, Parvej and Shahrukh caused injuries on the head, legs, arms and hands of Surya with iron rods wrapped with barbed wire. Other boys gave blows with glass bottles on the head and face of Surya. The injuries subsequently had led to the death of Surya at PGI, Chandigarh where he had been referred from Civil Hospital, Yamuna Nagar. The motive was that Surya had got registered a case against Manish Ganje, Nitin Mehra etc., and they had been pressurising Surya for giving an affidavit of their innocence.

Pursuant to the registration of the FIR the investigation began and the call detail records of a number of mobile phones were collected. Moni @ Ashu, Arjun @ Harsh and Parveen @ Ritik were apprehended and a motor cycle make Splendor was recovered from them.

On 15.09.2021 the aforementioned accused disclosed the name of the petitioner-Tarun. During investigation, iron rods/pipes and a wooden danda used in the commission of the offence were recovered and the CCTV footage was obtained. As per the said CCTV footage the petitioner was found present post the commission of the offence at a pump.

The report under Section 173(2) Cr.PC was submitted against Tarun (petitioner), Moni @ Ashu, Arjun @ Harsh, Parveen @ Ritik, Sagar, Shanky Pal, Gaurav Pal and Akshit Garg.

During the investigation, Tarun (petitioner), Moni @ Ashu were found to be Juvenile and therefore, separate challans were filed against them before the Juvenile Justice Board, Yamuna Nagar. However, after conducting of a preliminary assessment with regard to the mental and physical capacity and their ability to understand the consequences of an offence and circumstances of the case, an order was passed under Section 18(3) of the Juvenile Justice Act to the effect that there was a need of the trial of the petitioner-Tarun and Moni @ Ashu as adults. Therefore, their case was committed to the Court of Sessions.

3.

The learned counsel for the petitioner contends that the

petitioner has not been named in the FIR but has been named in the disclosure statement of his co-accused. Only a danda had been recovered from him, though he is stated to have caused injuries with a glass bottle and a danda on the head and legs of deceased Surya. As the petitioner was a Juvenile, in custody since 09.11.2021 and only 05 out of 35 prosecution witnesses had been examined so far, he was entitled to the concession of bail.

4. The learned counsel for the State has filed a reply dated 05.07.2023 by way of affidavit of Mr. Kanwaljeet Singh, DSP, Head Quarter, Yamuna Nagar in court today, which is taken on record. While referring to the said reply he contends that the petitioner along with his co-accused had brutally assaulted the deceased. Though the petitioner was not named in the FIR, he was visible in the CCTV footage of a petrol pump after the occurrence and as per the prosecution case he had given blows with a glass bottle and a danda on the person of the deceased. Therefore, he was not entitled to the concession of bail. He however concedes that the petitioner is less than the age of 18 years, in custody since 09.11.2021 and only 5 of the 35 prosecution witnesses had been examined so far and that he is a first time offender.

5. I have heard the learned counsel for the parties.

6. Admittedly, the petitioner was not named in the FIR but his name finds mention in the disclosure statement of his co-accused. He is also stated to be less than 18 years old. He is first time offender, in custody since 09.11.2021 and only 05 of the 35 prosecution witnesses have been examined so far. In this view of the matter, his further incarceration is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Tarun** son of Sh. Parveen Kumar is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the

petitioner from the trial without sufficient cause.

11. The revision petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

November 28, 2023

Vinay

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