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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: July 26, 2023

Balram @ Gandhi

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. G.S. Sandhu, Advocate for petitioner.

Ms. SvaneelJaswal, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner, 19-year old young boy, seeks bail in a case bearing FIR No.124 dated 14.07.2020, registered under Sections 302, 323, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2) (V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') (Sections 148 and 149 of IPC were deleted and Section 34 of IPC added later on), at Police Station Nighdu, District Karnal.

2. Per prosecution version, on 13.7.2020, petitioner and co-accused entered into a fight with complainant-Ujjawal @ Kaku and others. Petitioner and co-accused assaulted Kaku. Bobby as well as his cousin Prince then caught hold of complainant's brother-Prajwal, and then Ajay @ Kaka as well as Gandhi (petitioner) gave repeated blows to Prajwal with their respective bodkins. When the victims raised alarm, Pardeep, Ishwar and Suresh came there to rescue them. Ajay @ Kaka, Bobby, Prince, petitioner-Gandhi and two-three other boys then decamped from crime scene. While leaving, they gave threats to kill them using caste slur. Prajwal was rushed to hospital, but he later succumbed to his injuries inflicted on by the accused in the aforesaid incident. An FIR was registered. Petitioner was arrested on 17.07.2020 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that similarly placed co-accused of the petitioner, namely Ajay alias Kaka has already been accorded concession of bail vide order dated 14.03.2023 (Annexure P-5) passed by a co-ordinate Bench of this Court in CRM-M-11499-2023, and on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial. He further

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points out that, in any case, based on testimonies of prosecution witnesses examined so far, in all likelihood, the trial will result in acquittal of the petitioner since not only the complainant-PW1, namely, Ujjwal, even eyewitness-PW2, namely Gauri and another eyewitness-PW3 Pardeep Kumar have resiled from their earlier statements and have not supported the prosecution version. Their testimonies are appended with the petition as Annexures P-1 to P-3.

4. On the other hand, learned State counsel, on instructions from ASI Nirmal Singho opposes the bail petition. She submits that petitioner has committed a serious offence. Due to injuries given by petitioner along with his co-accused, ultimately brother of the complainant died. She would further submit that petitioner has been able to win over the witnesses. If enlarged on bail, petitioner may tamper with the evidence and/ or influence the witnesses. However, she admits that there is no other case against the petitioner.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Co-accused/Ajay alias Kaka has been granted concession of bail by a co-ordinate Bench of this Court vide order dated 14.03.2023 (Annexure P-5). Role attributed to the petitioner, i.e. allegedly using bodkin as a weapon, appears to be at par with that of his co-accused Ajay alias Kaka.

6.1. Complainant as well as eye witnesses have resiled from their earlier statements since they have not supported the prosecution version. There seems every likelihood of trial resulting in acquittal of the petitioner.

6.2. On a Court query, learned State counsel points out that there are total 26 witnesses and out of them, 5 have been examined. Challan has been filed and charges were framed on 23.12.2020. Being so, since trial has commenced, thus petitioner is not required for any further custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Conclusion of trial is still likely to take a long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 2 years in preventive custody, he being behind bars since 17.07.2020.

6.3. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. It is stated that petitioner is a 19-year old young boy and it was only a neighborhood scuffle which turned

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ugly and resulted in the unfortunate incident wherein deceased lost his life. If not released on bail, he will suffer further adversarial impact on his carrier prospects and may be rendered jobless forever. Being a young boy having clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings.

6.4. That apart, I see no reason why the benefit of parity be not accorded to the petitioner also.

7. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

8. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

9. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 26, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No