

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-25057-2023 (O&M)

Date of decision: 09.08.2023

Mukesh

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sahil Gupta, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Kanwal Goyal, Advocate and Mr. Govind Tanwar,
Advocate for the complainant.

ARUN MONGA, J. (Oral)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in case bearing FIR No.724 dated 19.12.2021 (Annexure P-1), registered under Sections 147, 148, 323, 325, 506, 307 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC'), (Section 325 and 307 IPC added later on) at Police Station Mujessar, District Faridabad, Haryana.

2. Per prosecution, on 18.12.2021, Lal Chand asked complainant-Rahul Bansal to remove his construction material lying at the place whereas he used to park his car. Same led to heated altercation with the complainant and his brother Yogesh Bansal. The accused and his sons who also came there, allegedly gave *danda* blow to complainant and his brother Yogesh Bansal on their head. However, the matter was later amicably settled.

2.1 On the following day i.e., on 19.12.2021, Munesh Bhardwaj alias Sardar (co-accused), Lal Chand, Hemraj, Jai (Himanshu) and wife of Lal Chand along with 3/4 boys again came and physically assaulted complainant and his family members. They inflicted injuries on complainant, his brother, namely, Yogesh Bansal and father Shiv Kumar Bansal, besides Mukesh Bansal and Tejpal

Goyal. Matter was reported to the Police. Instant FIR was registered. Petitioner was arrested and is in custody since 11.05.2022.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. Petitioner was not named in the FIR. He has been implicated only on the basis of fact that he was also a family member of the persons who have been named in the FIR. The case set up against the petitioner is that he had given an injury to one Mukesh Goyal with a cricket bat. During investigation, recovery of said cricket bat was planted on the present petitioner. Learned counsel further urges that it is a case of version and cross-version. Two persons from petitioner group, namely, Munesh Bhardwaj and Hemraj Bhardwaj also sustained grievous injuries. He further submits that petitioner is a shopkeeper and sole breadwinner of his family and has family to look after. Petitioner is not involved in any other case.

3.1. Learned counsel for the petitioner further canvasses that injured Mukesh Goyal deliberately got himself admitted in a private hospital to get self-serving contrived medical report *qua* his injuries. Based on such report, alleged injuries suffered by said Mukesh have falsely been declared dangerous to life and Section 307 IPC is thus illegally invoked in the present case. He further states that question whether the injuries suffered by injured Mukesh were dangerous to life or not, is a debatable issue and is to be determined in the trial.

3.2. Learned counsel further contends that similarly situated co-accused namely Munesh Bhardwaj @ Sardar has already been granted concession of regular bail by this Court vide order dated 20.07.2023. Petitioner's case is at par with co-accused and yet he continues to be in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial. Moreover, father of the petitioner is suffering from cancer and presence of petitioner is required for taking care of his medical needs.

4. On the other hand, learned State counsel assisted by learned counsel for complainant, opposes the bail petition. On instructions from ASI Jagbir Singh, he submits that petitioner has committed a serious offence and he is the main accused who has been attributed injury of Section 307 IPC. However, he admits that no other case is pending against him.

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

6. On a Court query, learned State counsel submits that challan was presented and charges were framed on 13.07.2022. Investigation is complete *qua* petitioner, he is thus not required for custodial interrogation. It is stated that there are total 27 witnesses, out of them 07 have been examined so far. 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 long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 01 year and 02 months in preventive custody, being behind bars since 11.05.2022.

7. 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.

8. Petitioner is stated to be 45-year old family man and has wife and two daughters and one son to look after, who have been deprived of care and protection of their father and the family is living in sheer penury in his absence. He has the added responsibility of looking after his ailing father, who is a known patient of cancer. Being married person, family responsibilities and fixed abode, having clean antecedents, he poses no flight risk or threat to the society at large.

9. Co-accused namely Munesh Bhardwaj @ Sardar has been granted concession of bail by this Court vide order dated 20.07.2023. Role attributed to the

petitioner appears to be at par with that of his co-accused Munesh Bhardwaj @ Sardar. In the premise, I see no grounds as to why petitioner should not be meted out with similar treatment.

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

11. Accordingly, petitioner is ordered to be released on bail 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 Magistrate, as the case may be.

12. 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.

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

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

(ARUN MONGA)
JUDGE

09.08.2023
vandana

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