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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: August 17, 2023

Monu

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Balkar Singh, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.439 dated 06.10.2022, registered under Sections 323, 506, 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (initially FIR was registered under Sections 323, 506, 308 read with Section 34 IPC, but later on, Section 308 of IPC was deleted and Section 307 of IPC was added), at Police Station, Sadar Sonapat, District Sonapat.

2. Per prosecution version, on 05.10.2022 at about 8.00 p.m., complainant-Manish along with his cousin Pawan were at the Railway track, when Ravi, Monu (petitioner), Vikram and another boy came there and suddenly, started to physically assault them with *lathis/dandas*. Petitioner was allegedly also carrying an empty beer bottle and after breaking it, caused injuries to the complainant at his limbs. Whereas, other boys caused injuries on his head and hands. Thereafter, assailants also took the complainant away on his motorcycle towards canal side. The motorcycle slipped on the road and on seeing people come, the assailants fled away from the spot. During investigation, petitioner was arrested and is in custody since 08.10.2022.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated. He submits that injury suffered by the complainant which was dangerous to life, is not attributed to the petitioner. In course of hearing, learned counsel relies on testimony of complainant *qua* role attributed to the petitioner. Certified copy of the same

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has been tendered in course of hearing, which is taken on record and is marked as Annexure 'A'. Learned counsel would read the same and point out that entire case of prosecution against the petitioner falls like a pack of cards, inasmuch as, complainant (PW-6) himself has not supported the same. He has clearly deposed that petitioner had allegedly inflicted injury on his hand. Therefore, prosecution version, that it was petitioner who gave the fatal blow on the head of complainant with *lathi*, does not survive. He further relies on MLR, which is the very basis of invocation of Section 307 of IPC and states that injury on the head was the reason for such invocation. And petitioner, if at all, has caused any injury, the same was merely simple and on hand of the complainant, as already deposed by the injured-complainant him in his examination-in-chief.

3.1. Learned counsel further urges that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars.

4. On the other hand, learned State counsel, on instructions from ASI Vikas, opposes the petition and submits that petitioner has committed a serious offence. He however, admits that there is no other case against the petitioner. If enlarged on bail, there is every likelihood that he will commit similar offence and/or will flee from trial, and he might tamper with evidence or influence/ intimidate the witnesses.

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

6. It so appears that complainant himself has stated in his testimony that petitioner inflicted injury on his hand and therefore, *prima facie*, there seems no force in the prosecution version that it was petitioner who gave a blow on the head of complainant. On a Court query, learned State counsel submits that challan has been presented and charges were framed on 17.03.2023 *qua* petitioner and co-accused, Ravi @ Gada. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Out of total 19 witnesses, 4 are stated to have been examined and 3 have been given up. 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. Whereas,

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petitioner has already been languishing in jail for the past more than 10 months in preventive custody, being behind bars since 08.10.2022.

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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. It is stated that petitioner is 32-year old person having old-aged ailing parents to look after. Being a family man and having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

9. 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.

10. 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.

11. 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.

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

(ARUN MONGA)
JUDGE

August 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No