

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

CRM-M-34163 of 2021(O&M)

Date of Decision: 24.02.2023

Manoj

...Petitioner

Versus

State of Haryana

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Argued by- Mr. Vinod Ghai, Sr. Advocate with
Mr. B.N.S. Marok, Advocate
For the petitioner.**

Mr. Vishal Kashyap, DAG Haryana.

**Mr. Bijender Dhankar, Advocate
For the complainant.**

KARAMJIT SINGH, J.

The petitioner has approached this Court seeking grant of regular bail in a case having FIR No. 218 dated 08.10.2020, registered under Sections 148, 149, 341 and 302 IPC at Police Station Behal, District Bhiwani, to which offence under Section 34 IPC was added lateron.

Brief facts of the case are that complainant Dalbir gave written complaint to the police alleging that on 07.10.2020 at about 10:00 p.m. his brother Bijender was going on a motor cycle to irrigate his fields and he was followed by the complainant on a separate motor cycle and on the way 14-15 persons armed with different weapons were seen standing near Bolero Camper and when Bijender was crossing them, immediately petitioner Manoj gave blow of wooden *danda* to Bijender, as a result of which he fell on the ground along with his motor cycle and then Bijender started running

towards house of Balbir son of Kesho Ram and entered the said house but he was chased by petitioner Manoj, Anil, Sunil, Rajesh, Surinder and Ajay and then petitioner Manoj and Sunil caught Bijender from his hands and Rajesh and Surinder caught his legs and dragged him outside the house. Then Pankaj, Vikram, Jai Bhagwan, Ajay and Anil started giving *danda* and iron rod blows to Bijender. In the meantime Anil and Ajay gave *saria* blows on the head of Bijender while Naveen gave blows of wooden *danda* on his feet. Then Jai Bhagwan proclaimed that it will not be easy to kill Bijender and let he be crushed under the vehicle and then Mukesh ran Bolero Camper over Bijender, twice. Complainant, Sandeep, Bala and Dinesh tried to rescue Bijender and in the meantime the accused persons fled away from there in the vehicle driven by Mukesh. Lateron, Bijender was taken to nearby hospital where he was declared brought dead.

The Senior counsel for the petitioner submits that the petitioner has been falsely implicated in this case and in custody for the last more than 02 years and 03 months and is having no criminal history. The Senior counsel further submits that as per the allegations recorded in the FIR, there were 12 accused, however, during investigation 09 of them were found innocent and only the present petitioner, Anil and Mukesh were challaned by the police and the application moved by the prosecution under Section 319 Cr.P.C. to summon the above-said 09 persons as additional accused, is also dismissed by the learned trial Court. The Senior counsel further submits that even if the prosecution story is taken on its face value, the only allegations against the petitioner are that he was armed with wooden *danda* and gave its blow as a result of which Bijender fell from his motor cycle and then

Bijender entered the nearby house of Balbir from where he was dragged by petitioner and some other persons by holding his hands and legs. That no injury on the vital part of body of deceased is attributed to the petitioner except for the one blow of wooden *danda* which hit on the arm of the deceased. The Senior counsel further submits that as per ruqa Annexure P-3 sent by the concerned Doctor, it was a case of alleged history of road traffic accident as told by the attendant of the patient. That even as per Annexure P-4 it was a case of alleged history of road side accident which took place at around 9:30 p.m. on 07.10.2020.

The Senior counsel further submits that during trial all the material witnesses have been examined and even the concerned Doctor also stands examined. The Senior counsel further submits that as per testimony of PW3 Dr. Arun who conducted post mortem examination on the dead body of Bijender, the possibility of injuries found on the body of Bijender being sustained in road side accident could not be ruled out. The Senior counsel also referred to Para Nos. 5 onwards of the reply filed on behalf of the State as per which the petitioner was arrested on 05.11.2020 and he got recovered one wooden *danda*. The Senior counsel further submits that complainant Dalbir (eye witness), Dinesh and Sandeep (another two eye witnesses) are already examined. So, there is no apprehension that if released on bail the petitioner is going to pressurize them to depose in his favour. The Senior counsel further submits that it will take considerable time for the trial to conclude. So, prayer is made that the petitioner be released on bail.

The State counsel has submitted that the petitioner is the main accused and only at his instance unlawful assembly was constituted which

attacked Bijender and caused his death. The State counsel has further submitted that the trial is going on and there are specific allegations against the petitioner and as such at this stage no ground is made out to grant regular bail to the petitioner.

The counsel for the complainant while resisting the present petition submits that about 8-10 days prior to the present occurrence, the present petitioner had a quarrel with Bijender regarding petty issue and as such the petitioner was nursing grudge against the deceased. The counsel for the complainant further submits that due to same reason the petitioner and other accused persons intercepted the deceased while he was going on his motor cycle and at that time petitioner gave *danda* blow to the deceased as a result of which he fell from his motor cycle and thereafter the petitioner and other accused persons caused injuries to the deceased with different weapons in furtherance of their common object and further co-accused Mukesh finally crushed Bijender under Bolero vehicle and on account of the said injuries he died. The counsel for the complainant further submits that the petitioner is specifically named in the FIR and there are specific allegations against him and after his arrest he got recovered wooden *danda*. The counsel for the complainant further submits that during trial all the material witnesses have supported the case of the prosecution and even the medical evidence also corroborates the ocular version. The counsel for the complainant further submits that there was clear motive on the part of the petitioner to cause physical harm to the deceased. The counsel for the complainant further submits that no doubt the application moved by the prosecution under Section 319 Cr.P.C. to summon additional accused stands

dismissed, the complainant has filed revision petition against the same which is pending in this Court. The counsel for the complainant further submits that the petitioner is the main accused and the trial is going on and thus, at this stage no ground is made out to grant bail to the petitioner.

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

Undoubtedly, the petitioner is named in the FIR, as per which, at the time of occurrence, the petitioner was armed with *danda* and he gave its blow to Bijender who was going on a motor cycle as a result of which he fell on the ground and then the petitioner and other accused persons chased him and dragged him out of house of Balbir. Thereafter, no specific injury is attributed to the petitioner and it was co-accused Jai Bhagwan who exhorted another accused Mukesh to kill Bijender by crushing him under his Bolero vehicle and on this, said Mukesh is stated to have rolled his vehicle back and forth twice over Bijender. During trial complainant Dalbir and other material witnesses are examined wherein they reiterated the version of the FIR. PW3 Dr. Arun who was member of the Board of Doctors constituted to conduct the post mortem examination of the dead body of Bijender, while appearing in the witness box stated that the cause of death in this case was neuro-hemorrhagic shock due to injuries and its complications caused to vital organs which were ante mortem in nature and sufficient in ordinary course to cause death. PW3 further clarified in his cross-examination that the possibility of the injuries being sustained in road side accident cannot be ruled out. Now there is no apprehension that if released on bail the petitioner

is going to pressurize the eye-witnesses, as they have already testified before the learned trial Court.

In view of the above, as except for one *danda* blow given by the petitioner as a result of which the deceased fell from his motor cycle, no other specific injury is attributed to the petitioner and there was no exhortation from his side to crush Bijender under the vehicle, the exact culpability of the petitioner would be determined only after the recording of the entire prosecution evidence and further the material witnesses are already examined and the petitioner is in custody for the last more than 02 years and 03 months and it will take considerable time for the trial to conclude, no purpose is going to be served by prolonging the judicial custody of the petitioner.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/ CJM/ Duty Magistrate concerned. However, any observations made hereinabove is not to be considered as expression of opinion on the merits of the case.

24.02.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No