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

CRM-M-29866-2023

Date of decision: 07.07.2023

Gurmail @ Teli

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. D.S. Virk, Advocate for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is the third petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.244 dated 31.05.2019 registered under Sections 148, 341, 302, 120-B of the Indian Penal Code, 1860 read with Section 149 of IPC and Section 25 of the Arms Act, 1959 at Police Station City Kaithal, District Kaithal.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 02.06.2019 (more than 4 years and 1 month) and investigation is complete and challan has been presented and there are 35 prosecution witnesses, out of which, only 14 witnesses have been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the first bail application filed by the petitioner was dismissed as withdrawn at that stage on 17.08.2021 and the second bail application filed by the petitioner was dismissed as withdrawn at that stage on 27.07.2022 and in the order dated 27.07.2022, the trial Court was directed to expedite the

trial proceedings but the trial still has not been concluded and several witnesses are yet to be examined. Reference has been made to various zimni orders, more so, zimni order dated 10.03.2023 in order to show that on the said date, no PW was present and bailable warrants in the sum of Rs.10,000/- were issued to summon the witnesses i.e., PWs-Sandeep and Rohit. Reference has also been made to the last zimni order dated 20.05.2023, on which date, the case was adjourned to 10.08.2023 as the Presiding Officer of the Court was on casual leave. It is contended that the petitioner was not named in the FIR as the FIR has been registered against unknown persons and the complainant is not the eye-witness in the present case and the eye-witness in the present case, as per the case of the prosecution, is Gurdev who has already been examined as PW5.

3. Learned counsel for the petitioner has submitted that as per evidence of PW5-Gurdev, no specific injury has been attributed to any person much less the present petitioner. It is further submitted that the said PW5 has stated that he had identified Ashok Kumar (accused) who was his brother-in-law and the name of the present petitioner was disclosed to him by the police. Reference has been made to the cross-examination of the said PW5 in order to highlight the fact that none of the accused persons except Ashok was known to him by face or by name prior to the incident. It is contended that as per the affidavit of the Doctor, the deceased had suffered 6 injuries, out of which, 5 injuries were incised wound whereas recovery from the present petitioner is of wooden stick (binda). It is argued that even as per the case of the prosecution, enmity was primarily between the deceased and

Ashok(brother of the deceased). It is prayed that apart from other facts, keeping in view the custody of the petitioner and the stage of the trial, the petitioner deserves the concession of regular bail. It is also submitted that co-accused of the petitioner namely Ankit and Raj Kumar @ Raju have been granted the concession of regular bail by a Coordinate Bench of this Court vide orders dated 05.05.2022 and 01.08.2022 passed in CRM-M-17882-2022 and CRM-M-21430-2022 (Annexure P-3 and P-4 respectively).

4. Learned State Counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner along with other co-accused Ashok (brother of the deceased) had a dispute with the deceased and the present petitioner was friend of said Ashok and the petitioner and Ashok along with other accused persons inflicted multiple injuries upon the deceased, on account of which, he died and thus, committed a heinous offence and does not deserve the concession of regular bail. It is further submitted that there is one more case under the Prisons Act registered in the year 2022, against the petitioner while he was in custody.

5. Learned counsel for the petitioner, in rebuttal, has submitted that prior to the registration of the FIR, the petitioner was not involved in any other criminal case and has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in

another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. In the present case, the petitioner is in custody since 02.06.2019 (more than 4 years and 1 month) and investigation is complete and challan has been presented and out of 35 prosecution witnesses, only 14 witnesses have been examined and thus, the conclusion of trial is likely to take time. The previous bail application filed by the petitioner was dismissed as withdrawn at that stage, vide order dated 27.07.2022, on which date, the trial Court was directed to expedite the trial proceedings. Even after passing of the said order, several witnesses are yet to be examined. On 20.05.2023, the case was adjourned to 10.08.2023 as the Presiding Officer was on casual leave. On 10.03.2023, no PW was present, as a result of which,ailable warrants were issued against PWs-Sandeep and Rohit, who had not appeared despite service. Even on 31.03.2023, although, PW-Manish Kumar was examined but PWs-Sandeep, Deepak and Rohit had not appeared despite service ofailable warrants and furtherailable warrants were issued. It is apparent that the trial would not be concluded in the near future. The petitioner was not

named in the FIR as the same was registered against unknown persons. The complainant, in the present case, is not the eye-witness and it is Gurdev son of Sh. Rattan Singh, a relative of deceased Sunil and Ashok Kumar (co-accused), who is the eye-witness in the present case. Relevant portion of his evidence in chief is reproduced hereinbelow:-

“Deposition sheet of a witness examined on oath:

The information and deposition of Gurdev son of Shri Rattan Singh, resident of Badsikri Kalan, Kaithal, aged about 31 years Qualification B.com

Witness no. 5

on Oath

For the prosecution Taken before me (Purushottam Kumar)

Addl. Sessions Judge, Kaithal

Dated: 4.1.2022

Stated that I am labourer by profession. I am married with Pinki daughter of Ram Kumar, resident of village Narar. On 31.5.2019, I reached in city Kaithal where my brother-in-law namely Sunil Kumar met me at Bhagat singh chowk and he asked me regarding my visit there and I told him that I came at city for purchasing household articles and further he told me that he is going to near Gyara Rudri Mandir for purchasing some household articles and he also said to me for accompanied him and I said to him I will come there after sometime. Time was approximately 12 noon. Thereafter, I was going towards Gyara Rudri Mandir and I heard some noise and I was at the distance of about 2 or 3 shops away from Gyara Rudri Mandir. My brother-in-law Ashok Kumar alias Shoki was present there along with 5-6 other persons having two motorcycles who were having bindas and one of them was having sua (iron rod which issued to break the ice bricks). One accused gave sua blow on

the backside of Sunil (now deceased) and other accused gave many binda blows upon Sunil. On seeing the incident, I ran away from the spot and hiding myself by running towards the Bhagat singh chowk and save myself from the accused and thereafter it has come in my knowledge that due to the serious injuries caused by the accused Ashok etc., my brother-in-law expired and I reached in civil hospital, Kaithal where police recorded my statement.

On 4.6 2019, I joined the investigation of this case with police and identify the accused Ashok Kumar alias Shoki etc. who is my real brother-in-law and Gurmail whose name was disclosed by the police., vide memos Ex P10 to Ex.P12,.....

xxx xxx

xxx xxx

xxx xxx”

Relevant portion of cross-examination of said Gurdev is reproduced hereinbelow:-

“xxx xxx

xxx xxx

I went to Gyara Rudri mandir by feet from Bhagat singh chowk. None of the accused except Ashok was known to me by name or face prior to the incident. The accused were also not interfaced to me prior to incident.

Xxx xxx

xxx xxx”

8. A perusal of the same would show that no specific attribution with respect to any injury has been given to the petitioner and it has been stated that name of the petitioner was disclosed by the police. In the cross-examination, it has been stated that none of the accused except Ashok was known to him by name or by face prior to the incident. Co-accused of the

petitioner namely Ankit and Raj Kumar @ Raju have been granted the concession of regular bail by the Coordinate Bench of this Court vide orders dated 05.05.2022 and 01.08.2022 passed in CRM-M-17882-2022 and CRM-M-21430-2022 (Annexure P-3 and P-4 respectively). The custody of the petitioner is much longer than the custody of said co-accused Ankit and Raj Kumar @ Raju.

9. Keeping in view the abovesaid facts and circumstances, more so, the period of custody of the petitioner as well as the stage of trial and also in view of the law laid down by the Supreme Court in ***Maulana Mohd. Amir Rashadi's*** case (*Supra*), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

10. However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

11. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

07.07.2023

Pawan

**(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:-****Yes/No**