

216 (1st case)

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

CRM-M-34507-2022 (O&M)

Date of decision : 26.07.2023

Abhishek

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. R.S. Rai, Senior Advocate,
with Mr. Karan Garg, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Jagjot Singh, Advocate,
for Mr. Kunal Dawar, Advocate,
for the complainant.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in FIR No.0351 dated 28.06.2020, under Sections 148, 149, 323, 324, 341 (Sections 325, 302 & 120-B added subsequently) of the Indian Penal Code, 1860 (*for short 'the IPC'*), registered at Police Station Mujesar, District Faridabad.

2. Allegations are that the petitioner along with other co-accused, committed murder of one-Ankit and brief narration would be as under:-

On 28.06.2020 at about 6.30 a.m., deceased
was on his way to Ballabgarh for delivering milk. When

he reached near Sohna Raod Red *Kothi*, accused-Jai Ram and another boy stopped his motorcycle and gave beatings to him. However, deceased somehow managed to save himself and ran away. After one hour, when he was coming back to his house, petitioner-Abhishek, Kuldeep, Nikke, Sunil, Jai Raj, Kallu and two other boys against waylaid him. Petitioner stabbed him on chest, whereas, co-accused Jai Raj inflicted injuries with iron rod. After the incident, he was taken to hospital in an unconscious state by his parents and discharged on the same day. Thereafter, on his complaint, present FIR was registered under Sections 148, 149, 341, 343, 324 of the IPC.

On 01.07.2020, information was received by the police that Ankit was admitted in Pranchi Hospital, where he had passed away. Consequently, Section 302 of the IPC was added.

3. The Coordinate Bench granted interim bail to the petitioner on 21.12.2022, in the following manner:-

“Learned Senior Counsel for the petitioner inter alia contends that in the present case, the petitioner is in custody since 07.07.2020 and the petitioner is not involved in any other case and the alleged incident had taken place on 28.06.2020 and FIR was got registered on the statement of victim-Ankit himself, who was undisputedly alive after the alleged incident had taken place. It is further submitted that the said Ankit had died on 01.07.2020 on account of his having not been given the requisite treatment. It is argued that the question as to whether the offence under Section 302 of IPC is made out or not is a debatable issue in the present case. It is contended that initially, the challan was presented against

four persons and brother of the deceased was examined and, thereafter, an application under Section 319 Cr.P.C. had been moved by the prosecution and vide order dated 11.11.2021, three persons had been summoned as additional accused to face trial. It is further contended that the said order dated 11.11.2021 has been challenged by way of filing CRR-1688-2021 and in the said case, notice of motion has been issued and the operation of the impugned order dated 11.11.2021 has been stayed and the said matter is now listed for 07.02.2023. It is further argued that in the present case, there are 20 witnesses, out of which, four have been examined as yet but further trial in the case would also depend on the final order passed with respect to the application filed under Section 319 of Cr.P.C.. It is also submitted that in case, such impugned order passed in the application filed under Section 319 of Cr.P.C. is upheld, then there would be a denovo trial and as further submitted that even in case, the impugned order is set aside, then also 16 more witnesses are required to be examined as yet and thus, the conclusion of the trial is likely to take time. It is also contended that as per case of the prosecution, injury No.1 in the MLR and injury No.2 in the postmortem report have been attributed to the present petitioner but a perusal of the description of the said injury, as detailed in the postmortem report, would show that after dissection, it has been found that the said injury was "superficial". It is also argued that considering the abovesaid fact alongwith the fact that on 28.06.2020, the deceased, who had got the present FIR registered, was in a position to get the said FIR registered in Police Station and was alive for three days thereafter, as even as per the case of prosecution and had died on 01.07.2020, it would be highly debatable as to whether or not, it was on

account of the alleged injury that the deceased had died. It is also contended that in the present case, the possibility of the Doctor being examined in the near future is bleak, and the proceedings have come to a standstill on account of the challenge to the order, vide which, the aforesaid application under Section 319 Cr.P.C. filed by the prosecution has been allowed, in which the stay order has been granted.

Learned Senior Counsel for the petitioner has submitted that the petitioner has strong arguable points in his favour and at any rate, he deserves the concession of interim bail on account of the proceedings being at a standstill.

Learned counsel for the complainant and State have submitted that the petitioner is the person who had inflicted injury No.2, as mentioned in the postmortem report and the complainant had died on account of a horizontal stitched wound of length 5 cm present on the lateral aspect of the left nipple, which on further examination after dissection was revealed to be superficial and thus, the death of the complainant had taken place on account of the said injury No.2. They seek more time to assist the Court on the said aspect.

Adjourned to 07.02.2023.

In the meantime, keeping in view the fact that the petitioner is in custody since 07.07.2020 and the proceedings are at a standstill, the petitioner is released on interim bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

To be heard alongwith CRR-1688-2021.”

4. Learned counsel for the petitioner contends that petitioner was granted interim bail by the Coordinate Bench on 21.12.2022 and he is regularly appearing before learned trial Court. There is also no apprehension to either the prosecution witnesses or that he is likely to hamper the trial, in any manner.

5. Learned State Counsel, on instructions, has fairly acknowledged the above factual position.

6. Heard learned counsel for both the sides and perused the paper book.

7. Petitioner was granted interim bail by the Coordinate Bench and he is regularly appearing before the Court below; there is no allegation that he is likely to misuse the concession of bail or hamper the proceedings in any manner, in case his interim bail is made absolute; thus, sending him in custody at this stage would not serve any purpose.

8. Consequently, present petition is allowed. Interim bail granted to the petitioner, vide order dated 21.12.2022, is made absolute. He shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

9. Petitioner shall appear on each & every date and fully co-operate with the learned trial Court without seeking any unnecessary adjournment(s).

10. The above observations may not be construed as an expression of opinion on the merits of the case.

11. It is clarified that in case there is any misuse of concession of bail on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

26.07.2023
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No