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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33532-2023 (O&M)

Date of decision:16.08.2023

Loveraj Singh @ Labha

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Ms.Guramrit Kaur, DAG, Punjab.

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.82 dated 02.07.2021, registered under Sections 341, 323 read with Section 34 of Indian Penal Code (Section 308 of IPC added later on)at Police Station, Sultanwind, District Amritsar.

2. Per FIR, on 01.07.2021 at about 9.30 p.m., Abhay Pratap Singh @ Abha, son of complainant-Sukhwinder Singh, was on way to meet his uncle Ajit Singh, who resides a little ahead from the house of complainant. He was intercepted by the petitioner armed with a baseball bat. His brother Manga was armed with handle of spade. Haven, a cousin of petitioner, was armed with *Datar*, Choka, a nephew of petitioner, was armed with an iron rod. Petitioner gave baseball bat blow on the head of injured, who fell on the ground. Complainant rushed to the spot and raised alarm. Residents of the locality gathered at the spot and the assailants took to their heels with their respective weapons. On the basis of statement of complainant, FIR was registered. During investigation, complainant gave a supplementary statement that co-accused Vishal alias Choka caused injury on the right arm of his son with the iron rod. Petitioner was arrested on 25.01.2023, after one and a half year of the incident, and has been in custody ever since.

3. Learned counsel for petitioner submits that neither the petitioner was present on the alleged place of occurrence nor was he armed with any weapon nor he caused any injury to the son of complainant. He further states that injuries caused to the victim, if at all by the petitioner, are of simple in nature and that is the very reason, the FIR was initially registered under Section 323 IPC. Merely to implicate the petitioner in a more grave offence, which is non-bailable i.e. Section 308 IPC, the said Section was added in the FIR subsequently. He further

been the allegation then at the very first instance, without waiting for the medical opinion, on the basis of complainant's statement alone, prosecution ought to have invoked Section 307 IPC.

3.1. Learned counsel for petitioner further submits that in any case, petitioner was not present at the scene of occurrence and without there being any evidence *qua* his presence merely on the statement of complainant, his name has been added in the FIR, along with all other family members to settle personal scores as complainant's family. Complainant has got some past enmity with petitioner being neighbours, with respect to usage of sewerage system causing nuisance in the neighborhood. He further contends that it was after 15 days of registration of FIR, that Section 308 IPC was added. Not only that, he points out that petitioner was arrested out of blue, one fine day, after a year and a half of the FIR, merely to satisfy the ego of the complainant. Same is reflective that prosecution is playing in the hands of the complainant and is not proceeding in a fair manner.

3.2 Further argues that co-accused of the petitioner, namely, Hymen @ Haven has already been accorded concession of regular bail by learned trial Court vide order dated 24.09.2021 (Annexure P-2). Petitioner's case is at par with his co-accused who is on bail 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.

3.3 He further submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

4. On the other hand, learned State counsel, opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. She, however, submits 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, under instructions from SI Jagbir Singh, learned State counsel submits that challan against petitioner was presented on 24.02.2023 and charges were framed on 10.05.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. There are 18 prosecution witnesses out of them, none has been examined till date. Commencement/ conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for 06 months and 22 days in preventive custody, he being behind bars since 25.01.2023. He 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. Petitioner is stated to be 25-year old family person and only bread winner of his family, who are living in penury in his absence. Being a family man with clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings.
9. Co-accused has been granted concession of bail by learned trial Court vide order dated 24.09.2021 (Annexure P-2).
10. 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.
11. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
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 of 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

16.08.2023
vandana

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