

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

CRM-M-36151-2022

Date of decision : 13.03.2023

Robit @ Rubi

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. N.S. Swaitch, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.0035 dated 23.07.2018, under Sections 302, 506, 34 of IPC, registered at Police Station Qadian District Gurdaspur.

Adumbrated facts of the case are that the complaint was lodged on the statement of Bittu Masih son of Billu Masih. It was alleged that on 22.07.2018, when he along with his son Hira Masih, Kashmira and brother Mintu Masih were returning from the fields at about 8:00/8:30 PM then Vijay son of Billa Masih, Gagan son of Sewa Masih armed with *datar*, Ruby (petitioner) son of Bira Masih armed with bat of wood, Dhola Masih son of Gabar Masih, Raja son of Saba Masih armed with bat, Vishal son of Bira Masih, Soni son of Mini Masih armed with *Sota*, Joga Sunny Masih son of Bira Masih, Sukha son of Mindi, Billa Masih son of Nazar Singh armed with *dang* were found standing on the way with the common intention then Ruby raised *lalkara* and he caught hold Hira. Thereafter, co-accused gave the blows of their respective weapons to his son.

Resultantly, he was seriously injured. They took him to the Civil Hospital, Batala and was referred to Guru Nanak Dev Hospital, Amritsar where he was declared dead. Request was made to take legal action against the culprits. On the basis of the complaint, formal FIR was lodged and investigation commenced. The postmortem of the body was conducted. The statements of the witnesses under Section 161 Cr.P.C. were recorded and the petitioner was arrested on 29.07.2018. Though 11 accused were named in the FIR, however, on completion of the investigation, 08 accused were declared innocent by the investigating agency and the challan was presented against three accused including the petitioner. Petitioner approached the Court of learned Additional District and Sessions Judge, Gurdaspur praying for grant of regular bail. However, after hearing counsel for both the sides, learned Additional District and Sessions Judge declined the same vide order dated 11.02.2020. Aggrieved by the same petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that from the perusal of the allegations made in the FIR, it is apparent that the only allegation made against the petitioner is that he gave *lalkara* and caught hold the deceased whereas, the main accused against whom there are allegations of giving fatal blows has already been enlarged on bail by this Court. He has submitted that the petitioner is behind bars from last more than 04 years and 07 months and till date, the trial is not over. He submits that *dehors* the merits of the case, the petitioner has a good case on parity as the main accused has already been

enlarged on bail by this Court vide order dated 22.02.2022 passed in CRM-M-37086-2021. He submits that though petitioner was prosecuted in two other cases, however, he has been acquitted in the same by the trial Court.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from ASI Dilbagh Singh, has submitted that the petitioner has been duly named in the FIR. He submits that petitioner is the one who gave *lalkara* and caught hold the deceased which facilitated the co-accused to give him fatal blows. He submits that the petitioner has been prosecuted in two more cases as well however, he has been acquitted in the same. He submits that in all, there are 25 prosecution witnesses, out of which, 15 witnesses already stand examined including the material witnesses. He fairly submits that the co-accused who gave the fatal blow has already been granted bail by this Court.

I have heard counsel for the parties and perusing the record. Evidently, the petitioner is behind bars from last about 04 years and 07 months. He is alleged to have given *lalkara* and caught hold of the deceased. The main accused who gave the fatal blow has already been granted bail by this Court. As submitted by learned State counsel, out of 25 prosecution witnesses, 15 witnesses already stand examined including the complainant, meaning thereby, petitioner is not in a position to tamper with the prosecution witnesses.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself

from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

13.03.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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