

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-36761-2022 (O&M)

Date of Decision: 2.5.2023

Jagbir

....Petitioner

VERSUS

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Vinay Bajaj, Advocate,
for the complainant.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.0120 dated 21.2.2022 registered for the offences punishable under Sections 302 IPC (Sections 34, 109 IPC added later on) at Police Station Kharkhoda, Sonipat.

2. In the present case, FIR was registered on the basis of the statement of Mohit son of deceased-Mahavir wherein he stated that at about 5/6:00 p.m. on 19.2.2022, his father Mahavir received phone call from petitioner-Jagbir, who called the deceased to his brick kiln. Then the deceased left for brick kiln of the petitioner and thereafter, he never returned and on the next morning, when the complainant and other members of his family went to search the deceased, he was found lying unconscious at about 15-20 metres from the brick kiln of the petitioner and then the

deceased was taken to the private hospital for his treatment from where he was shifted to PGI, Rohtak where he died.

3. Counsel for the petitioner *inter alia* contends that the petitioner is named as accused only on the basis of the allegations that the deceased was called to his brick kiln by the petitioner by making him phone call and that then the deceased went to the said brick kiln and thereafter, he never came back. He further submits that the entire case is based on circumstantial evidence and that as per prosecution version, the petitioner who was arrested on 24.2.2020 while in custody, made disclosure statement that the deceased who was in inebriated condition came to his brick kiln and started fighting with him on which, the petitioner gave him one or two slaps/fist blows and then the petitioner left the spot. He further submits that the person who took the deceased to the hospital for his treatment, reported to the hospital authorities that the deceased sustained injuries due to some road side accident. He further contends that as per medical record, the deceased was under the influence of alcohol when he was taken to the hospital for his treatment. He further submits that after visiting the place of occurrence, the investigating officer prepared the crime scene visit report wherein it was specifically observed that no disturbance or any physical evidence relating to the crime was detected at the spot. He further submits that even as per mechanical test report (Annexure P-6), it appears that the motorcycle of the deceased was found in the damaged condition. He further submits that all these facts suggest that the petitioner sustained injuries in a road side accident, on account of which, he later on, died. He further submits that the petitioner is in custody for the last more than 1 year and 2 months and complainant-Mohit and other witnesses namely Kapil and Jaldeep are

already examined and copies of their depositions are placed on record. He further submits that it will take considerable time for the trial to conclude. So, prayer is made that the petitioner be released on regular bail.

4. Counsel appearing on behalf of the complainant submits that the petitioner is the main accused who called the deceased to his brick kiln and thereafter, gave him beatings and further incited co-accused Krishan and Davinder to kill the deceased and resultantly, Krishan and Davinder also caused injuries to the deceased which resulted in his death. He further submits that there is nothing on record to prove that it was a case of road side accident.

5. Present petition is resisted by the State counsel who filed reply by way of affidavit of Ramesh Kumar, Assistant Commissioner of Police, City-II, Sonipat along with Annexure R-1 which are taken on record. He submits that firstly, the petitioner called the deceased to his brick kiln and gave beatings to him and he also exhorted co-accused Krishan and Davinder to give further beatings to the deceased. However, the State counsel on instructions from SI Krishan has not disputed the fact that the petitioner is in custody for the last more than 1 year and 2 months and is having no criminal history and that during investigation, no incriminating article was recovered from the possession of the petitioner. State counsel further submits that the trial is going on and already 12 witnesses are examined including complainant-Mohit.

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

7. Admittedly, entire case is based on circumstantial evidence and

during investigation, no incriminating object or weapon was recovered from possession of the petitioner who is in custody for the last more than 1 year and 2 months. During trial, the complainant and other witnesses namely Kapil and Jaldeep are examined. The admissibility and relevance of confessional statement if any made by the petitioner before the police officials will be tested during trial. Even if alleged confessional statement dated 22.2.2022 made by the present petitioner is taken at its face value, the petitioner gave slaps and fist blows and then told co-accused Krishan that if the deceased further abuses anyone, then he be given proper beatings to make him understand and then the petitioner left for his house. So, it is a matter of evidence as to if the petitioner was having any intention to kill the deceased by giving him slaps and fist blows and he further exhorted co-accused Krishan and Davinder to kill the petitioner.

8. Admittedly, the complainant and other 11 witnesses have been examined and there is no apprehension that if released on bail, the petitioner is going to influence them. It will take considerable time for conclusion of trial. Thus, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

9. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 2, 2023

Paritosh Kumar