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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37071-2022 (O&M)
Date of Decision: 10.01.2023

AZAD

.. Petitioner

Vs.

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ajay Bhardwaj, Advocate
for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

...

Manoj Bajaj, J. (Oral)

Petitioner has prayed for grant of regular bail under Section 439 Cr.P.C, pending trial in case FIR No.283 dated 12.10.2018 registered under Sections 302, 364, 323, 148, 149, 120-B, 201, 177 and 203 IPC, 1860 and Sections 61/1/2014 Excise Act at Police Station Sadar Tohana, District Fatehabad, Haryana. The petitioner is in custody since his arrest on 12.10.2018.

The FIR was lodged on the basis of statement made by complainant/injured Pawan Kumar and the allegations as contained in the order dated 10.02.2021 while deciding regular bail application of the petitioner read as under:

"... the brief facts of the case for the disposal of the instant bail application are that on 12.10.2018, SI/SHO Jagdish Parsad along with other fellow police officials was present at Bus Stand of village Samain. Then, an information was received from the police station that Pawan son of Raj Kumar, resident of village Samain was admitted in General Hospital, Tohana, after receiving injuries in a quarrel and he had been referred to MAMC, Agroha. It was also informed that Dilbag Singh son of Ramphal Singh, resident of village Samain had also received injuries in the said quarrel and

he was also referred from General Hospital, Tohana to MAMC, Agroha but he was brought dead in MAMC, Agroha. On this, SI Jagdish Parsad along with other fellow police officials proceeded for MAMC, Agroha and SI Karam Singh along with other fellow police officials was also met him at the gate of MAMC, Agroha. Thereafter, the statement of complainant/injured Pawan Kumar was got recorded after seeking opinion regarding fitness. Complainant Pawan Kumar has alleged in his statement that he was an agriculturist by profession and they were two brothers. the name of his younger brother was Sumit @ Kala and his sister had been married. On 11.10.2018, at about 10.00 P.M., he along with Dilbag son of Ramphal, resident of village Samain, who was having a shop in village Khararwal, was coming on a motor-cycle to their village Samain. When at about 10.15 P.M., they reached at Water Tank near to his house, then Vikram @ Vikka, resident of village Kamalwala, present petitioner/accused Azad, resident of village Ratta Khera, Anmol @ Kaku, resident of village Samain and Annu, resident of village Danauda, came there in a vehicle of white colour and got stopped their motor-cycle. The assailants got them sit in their vehicle forcibly and Vikka, resident of village Kamalwala came back on his Bullet motor-cycle and present petitioner/accused Azad had brought their motor-cycle with them. The assailants had taken them near village Nangla Waterworks Road and caused injuries to them with dandas and gandas. The assailants after believing them to be dead, left the place in their vehicle and there were cartons of liquor in the said vehicle. The complainant also alleged that he and Dilbag were got admitted in General Hospital, Tohana by Sandeep and Sonu and they were further referred to MAMC, Agroha. The complainant further alleged that Dilbag Singh died due to the injuries received in the occurrence while bringing him to MAMC, Agroha. The complainant further alleged that his brother Sumit @ Kala had entered into an argument with Kuldeep son of Baljeet, resident of village Samain and out of said enmity, said Kuldeep got caused injuries to them. On the basis of this statement, the present case FIR was registered.”

Learned counsel for the petitioner has argued that the alleged occurrence is not witnessed by anyone and the petitioner has been falsely implicated along with other accused persons. He submits that the other co-accused, namely, Kuldeep, Sonu and Sandeep have already been released on regular bail and the charges in this case were framed on 31.07.2019, but till date only six witnesses have been examined so far out of total thirty two witnesses, therefore, considering the length of custodial period of the petitioner, which is approximately four years, he be also released on regular

bail.

The prayer is opposed by learned State counsel assisted by SI Ajmer Singh on the ground that the case of the prosecution is based upon dying declaration suffered by victim Pawan Kumar and in his statement, the petitioner's name is specifically mentioned. He submits that victim Pawan Kumar along with Dilbag Singh was kidnapped by the accused persons and the injuries were caused to both the victims by the accused, which resulted in their death. In this regard, learned State counsel has drawn the attention of the court to the statement of Pawan Kumar (Annexure P-1), whereupon the FIR was registered. According to him, the petitioner cannot derive any benefit on the basis of the concession of bail to his co-accused, as two of them were implicated on disclosure statement of the accused. He has further produced the custody certificate of the petitioner by way of affidavit of Dalbir Singh, Deputy Superintendent Jail, Central Jail No.2 (Hisar), Haryana, which indicates that while in custody, he was involved in a crime of similar nature, whereupon FIR No.311 dated 01.08.2019, under Sections 302, 303, 307, 323, 147, 148, 149, 109 and 120-B IPC at Police Station Azad Nagar Hisar, District Hisar was registered, and besides these two cases, he is also involved in other cases.

At this stage, learned counsel for the petitioner submits that no specific injury is attributed to the petitioner, who was allegedly armed with a danda and the same stands recovered from him and in the other case i.e. FIR No.311 dated 01.08.2019, the petitioner has already been released on regular bail vide order dated 17.11.2022 passed by this Court. He reiterates his prayer for regular bail.

After hearing the learned counsel for the parties and

considering the above background, this Court finds that the case of the prosecution is based upon the statement of victim-Pawan Kumar and as per allegations, the petitioner along with other persons caused injuries to him and Dilbag Singh. The allegations against the petitioner are serious thus, considering the gravity of the offence and the fact that the material prosecution witnesses are yet to be examined, this Court without meaning any expression of opinion on the merits of this case, does not find it to be a fit case for releasing the petitioner on regular bail at this stage.

Dismissed.

10.01.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No