

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

1) CRM-M-36632-2023 (O&M)

Sanjay ...Petitioner

Vs.

State of Haryana ...Respondent

2) CRM-M-47434-2023 (O&M)

Vakil @ Gokal ...Petitioner

Vs.

State of Haryana ...Respondent

Date of decision-05.12.2023

CORAM:- HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Nain, Advocate for the petitioner
in CRM-M-36632-2023.

Mr. V.B. Godara, Advocate for the petitioner
in CRM-M-47434-2023.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (Oral)

1. Both the petitioners have approached this Court by filing their
respective first application(s) under Section 439 of Cr.P.C. seeking grant of

regular bail in case FIR No.423, dated 12.12.2022 registered under Sections 147, 148, 149, 323, 379-B, 427, 452, 506 of Indian Penal Code, 1860 (Section 324, 325, 120-B, 302, 307 IPC and Section 25 of Arms Act, 1959 added later on), at Police Station Bhuna, District Fatehabad.

2. Learned counsel for the petitioner-Sanjay *inter alia* contends that the perusal of the FIR would indicate that the complainant Garib Dass has named six persons in the FIR, which was registered on 12.12.2022. The present petitioner has been implicated in this case only on the basis of disclosure statement suffered by co-accused while in custody which is hit by Section 26 of the Evidence Act. He further contends that the similarly situated co-accused namely Suresh has been granted anticipatory bail by this Court vide order dated 17.05.2023, passed in CRM-M-22135-2023 titled 'Suresh Vs. State of Haryana'. The injury attracting the offence under Section 302 of IPC is specifically attributed to co-accused Sandeep @ Bachi. The cause of death, according to the death summary, is respiratory failure and whether the same is a result of the alleged incident so as to make out the offence under Section 302 IPC is to be determined by the trial Court.

3. Learned counsel for the petitioner-Vakil @ Gokal *inter alia* contends that his case is also similar to the case of Suresh and also of co-accused Ram Niwas, who was granted regular bail by this Court vide order dated 29.11.2023 passed in CRM-M-59035-2023. Name of the petitioner-Vakil @ Gokal is also involved in the present case on the basis of disclosure statement of the co-accused while in custody and no injury is attributed to

him.

4. Respective status reports dated 04.12.2023 along with custody certificates dated 04.12.2023 are filed in Court in both the cases and the same are taken on record.

5. *Per contra* learned State counsel on instructions from SHO Dalbir Singh has opposed the prayer for grant of regular bail to the petitioners on the ground that they were members of unlawful assembly and have actively participated in the alleged incident. In the present case, Mukesh son of complainant-Garib Dass was murdered and two persons were seriously injured and. Furthermore, the petitioner-Vakil @ Gokal is involved in 7 more cases and as such he does not deserve the concession of regular bail.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that the petitioner-Sanjay is behind bars since 16.12.2022 and has undergone a custody of 11 months and 20 days as on 04.12.2023. The petitioner-Vakil @ Gokal is behind bars since 12.01.2023 has undergone a custody of 10 months and 23 days as on 04.12.2023. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 10.03.2023, but the trial of the case has not shown much progress as none of the prosecution witnesses have been examined so far. The similarly situated co-accused Suresh and Ram Niwas have already been granted anticipatory bail and regular bail respectively, by this Court.

7. The culpability, if any, would be determined at the time of trial. In view of the law laid down by Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and Another', 2020 (1) R.C.R. (Criminal) 831 and Maulana Mohd. Amir Rashadi vs. State of U.P. and others, 2012(2) SCC 382, the involvement of the petitioner in other cases alone would not be a sufficient ground to refuse grant of concession of regular bail. No useful purpose would be served by further detention of the petitioners as the trial is likely to take long time to conclude.

8. Accordingly, the petitions are allowed. The petitioners-Sanjay and Vakil @ Gokal are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

05.12.2023

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