

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

CRM-M No.40641 of 2022 (O&M)

Date of decision: 11.04.2023

Rahul

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. Harsh Vardhan Shehrawat, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.154 dated 28.07.2020, for offence punishable under Sections 302, 323, 342 (deleted) 34 (deleted) 120-B (added later on) of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Siwan-Kaithal, District Kaithal.

Counsel for the petitioner has submitted that the new ground for filing this petition is that the petitioner is in custody for the last 02 years and 08 months and out of 26 PWs, only 01 PW has been examined so far.

Counsel for the petitioner has further submitted that one of the co-accused, who is the father of the petitioner, has already been granted the concession of regular bail by this Court vide order dated 15.02.2021 passed in CRM-M No.3489 of 2021.

Brief facts of the case are that the FIR was registered at the instance of one Sohan with the allegations that he is a labourer and about 02 months ago, the petitioner had an altercation with his brother Sandeep and due to that grudge, on 27.07.2020 when the complainant along with his mother were going to take fodder, Mahavir, Sonia and the petitioner Rahul blocked the passage. Thereafter, Mahavir and Sonia caught hold of his brother Sandeep and the petitioner gave a danda blow. When the complainant and his mother Santro tried to rescue him, they started giving beatings to them also and thereafter, the accused ran away from the spot and the victim was taken to the CHC hospital from where he was referred to civil hospital and during the treatment, he had died.

Counsel for the petitioner has further submitted that post framing of the charge, the statement of the PW-1, Sohan complainant has been recorded, in which he has stated that the petitioner has given a single danda blow on the head of his brother Sandeep. It is further submitted that it has come in the examination-in-chief, copy of which is placed on record as “Mark X” today in the Court, of the complainant that no previous enmity or motive is attributed and it was a case of fight at the spur of the moment and therefore, it will be a debatable issue whether charge under Sections 302/304-II are made out or not during the trial. It is also submitted that since the statement of the complainant has already been record, there is no possibility for the petitioner to tamper with the prosecution evidence. It is further argued that one of the co-accused of the petitioner has already been released on bail. Lastly, it is argued that the petitioner is not involved in any other case

and the conclusion of the trial will take some time and out of 26 PWs, only 01 PW has been examined so far.

The affidavit of the Investigating Officer is on record and in the affidavit, after verifying the facts of the FIR and the investigation conducted, it is stated that the cause of death as per the post-mortem report is shock and haemorrhage due to head injury, which is ante-mortem in nature and sufficient to cause death. It is also stated that during the investigation, the petitioner has suffered a statement that he in conspiracy with the co-accused Mahavir @ Baba has killed Sandeep due to previous enmity.

Counsel for the petitioner has submitted that the said statement is yet to be proved during the course of trial and in the absence of any corroboration, the disclosure statement of the petitioner cannot be used against himself.

Without commenting anything on merits of the case, considering the fact that the earlier petition was dismissed as withdrawn one year ago and as on today, the petitioner is in custody for the last 02 years, 08 months and 11 days; the co-accused of the petitioner is already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

11.04.2023

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No