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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41147-2023 (O&M)

Date of decision:21.09.2023

Gaurav @ Goru

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. S.K. Bishnoi, Advocate,
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.143 dated 29.04.2019, registered under Sections 302, 147, 323, 427, 452, 148 read with Section 149 of IPC (Section 325 IPC added later on), at Police Station, Bhuna, District Fatehabad, Haryana.

2. Prosecution case is that on April 29, 2019, an FIR was registered based on the statement of complainant Karamjeet Singh, nephew of the deceased. The complainant alleged that on the previous day, April 28, 2019, at around 8:30/9:00 PM, while he and his brother Som Nath were present at their shop, the petitioner along with co-accused Sunil, Labi, Sewak, Manpreet, Birpal, Ved Pal, Roshan, Angrej, Jograj, and Deepal, armed with sticks, iron rods, and other weapons, came and entered their shop. Sunil hit the complainant on the head with an iron rod, Labi hit the complainant on the arm with a stick, and the other accused persons injured the complainant and his brother Som Nath. The complainant further alleged that they were rescued by his uncle Haji Ram. The assailants then trespassed into Haji Ram's house. The petitioner hit Haji Ram on the head with a gandasa, Roshan hit him with a kappa, and Deepak hit him with a kasola. The co-accused Sunil, armed with an iron rod, and the other accused persons, armed with sticks and danda, also injured Haji Ram, Som Nath, and their cousins Ashok, Ravi, Bimla, and Sohan. Thereafter, they were taken to MAMC, Agroha, where Haji Ram was declared dead. The complainant further alleged that the motive behind the incident was that, one

day prior to the present incident, the petitioner had trespassed into their house and they suspected him of stealing their goat. During the investigation, on April 30, 2019, the petitioner Gaurav and co-accused Sunil Kumar were arrested. During interrogation, they both admitted their guilt. On May 25, 2019, co-accused Labi and on June 21, 2019, Birpal were arrested. On July 26, 2019, a charge sheet was presented against the petitioner Gaurav and co-accused Sunil Kumar, Labi, and Birpal. During further investigation, on January 29, 2020, co-accused Manpreet was arrested. On February 26, 2020, co-accused Roshan Lal and Angrej were arrested.

3. Learned counsel for the petitioner argues that petitioner was not present at the place of occurrence and not even arrested from the spot. Sole piece of evidence which was planted by the investigation agency against the petitioner is alleged *gandasi*. Almost, every household has a *gandasi* in a village. Even cause of death in the present case is head injury which are alleged to be caused by three accused, namely, Sunil, Angrej and the present petitioner. The weapon and disclosure statement were obtained by the police during custody and, therefore, same has no evidentiary value as the recovery is planted. He further submits that all the persons involved in this case have already been arrested. Investigation is complete.

3.1 He further submits that petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. Further contends that out of 37 prosecution witnesses, only one has been examined. Trial will take some time to conclude as it is proceeding at a snail pace.

3.2 Co-accused have been granted concession of regular bail by a coordinate Bench of this Court vide orders dated 27.09.2022, 25.02.2022, 29.03.2022, 20.05.2022, 07.07.2022, 12.10.2022 and 06.12.2022 (Annexures P-4 to P-10).

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He, however, submits that no other case is pending against him.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.
6. On a Court query, under instructions from ASI Rajpal, learned State counsel informs that after filing of challan, charges were framed way back on 10.11.2021. He confirms that out of 37 prosecution witnesses, only one has been examined so far.
7. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 04 years and 04 months, being behind bars since 30.04.2019. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses.
8. Petitioner is stated to be 23-year old young boy having responsibilities of old parents to look after. He has already lost his livelihood due to prolonged incarceration. Being family person and having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.
9. Co-accused of petitioner have already been granted the concession of bail by co-ordinate Bench of this Court.
10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
11. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
12. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

21.09.2023
vandana

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