

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

CRM-M-44519-2022 (O&M)

Date of decision: 15.02.2023

Mukesh @ Monu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gourav Verma, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This is the third petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 123 dated 18.05.2020, registered under Sections 148, 149, 302, 323, 452 of the IPC at Police Station Barauda, District Sonapat.

The first and second petitions, bearing CRM-M-42193-2020 and CRM-M-23796-2021, were dismissed as withdrawn on 25.02.2021 and 24.01.2022, respectively.

Learned counsel for the petitioner submits that the new grounds for filing the present petition are that out of total 20 prosecution witnesses, only 11 prosecution witnesses have been examined so far and the petitioner is in judicial custody for the last more than 02 years and 08 months and conclusion of trial will still take a long time. It is further submitted that since all the main witnesses have already been examined, there is no

possibility for the petitioner to tamper with the prosecution evidence in case he is released on regular bail.

Learned counsel for the petitioner relies upon order dated 25.02.2021, passed by this Court in CRM-M Nos. 41075, 41369 & 42180 of 2020, vide which, co-accused Parveen, Ishwar and Ravinder have already been granted the concession of regular bail by this Court. The operative part of the order reads as under:

“Learned counsel for the petitioners with regard to the accused Parveen, Ishwar and Ravinder have relied upon the order dated 17.11.2020 vide which, one of the co-accused Sunil was granted the concession of regular bail in CRM-M-29969 of 2020. The operative part of the order reads as under:-

“Prayer in this 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.123 dated 18.05.2020, for offence punishable under Sections 148, 149, 302, 323, 452 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Baroda, Gohana, District Sonapat.

Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Bijender, his family is having a civil litigation against Rampal son of Giani Ram and the Civil Court has decided the case in favour of the complainant party. On 17.05.2020, Rampal, Satyawar, Parveen, Iswar, Rajesh, Jai Bhagwan, Rajbir, Omi, Sunil (petitioner herein), Neeta, Sonu, Ravinder and Monu, who belong to the family of Rampal, started throwing bricks at the house of the complainant and when the complainant, his brother Narinder and elder brother Jagbir came out to see what is happening, the aforesaid persons armed with weapons attacked them. Rampal hit Bijender with

a brick on his head and left shoulder, Monu hit his brother Narinder with a brick on his face and Rajbir hit on the legs and the arms with sticks and danda. Jai Bhagwan and Sonu caused injuries to Jagbir with brick, who was standing at verandah on the terrace of the house, which hit on the chest and back, due to which, he succumbed to his injuries while taking to PGI, Rohtak. It is further submitted that in fact, it was a case of free fight in which from the petitioner's side, 02 persons namely Jai Bhagwan and Rajbir, also suffered injuries and in this regard, a DDR has been registered with the police for treating it as a cross-version.

Counsel for the petitioner has also submitted that the petitioner – Sunil, though, named in the FIR but no specific role is attributed to him except that he was present at the spot. It is further submitted that neither any recovery is effected from the petitioner nor his disclosure recorded regarding his participation in the commission of offence is signed by him.

Counsel for the petitioner has also submitted that challan stands presented and it will take long time in conclusion of the trial. It is also submitted that the petitioner is not involved in any other case.

Counsel for the State has filed the affidavit of the Additional Superintendent of Police, Gohana, Sonapat and has not disputed the factual position as per the allegations in the FIR as well as the MLRs relied upon by the petitioner but opposed the prayer for bail.

After hearing the counsel for the parties and going through the contents of the FIR; MLRs relied upon by the petitioner as well as the role of the petitioner; and also in view of the fact that in the affidavit also, there is no role attributed to the petitioner; challan stands presented; 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 due to COVID-19 situation, 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/Illaqa 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.”

For the sake of brevity, the facts are not reproduced again. ”

Reply, filed by way of the affidavit of the Investigating Officer, is on record, wherein it is stated that the petitioner has inflicted an injury on the face of deceased Narender with a brick.

Learned counsel for the petitioner submits that there were similar allegations against co-accused Rajbir, who has also been granted the concession of regular bail.

Learned State counsel, on the basis of the aforesaid affidavit, submits that the brick was recovered from the residential house of the brother of present petitioner.

As per custody certificate filed today in Court, the petitioner is in judicial custody for the last 02 years, 08 months and 22 days and he is not involved in any other case.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in long judicial custody; he is not involved in any other case; some of the co-accused of the petitioner have already been granted the concession of regular bail as noticed above and also in view of the fact that conclusion of trial is likely to take some time, the instant

petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

15.02.2023

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No