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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43474-2023 (O & M)
Date of decision: 12.12.2023

Shiv Kumar @ Shiv Mahakal

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Namit Khurana, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in this petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in case FIR No.229 dated 03.10.2022 under sections 323, 302 and 120-B IPC registered at Police Station Farakpur, Distt. Yamunanagar.

2. The present FIR came to be registered at the instance of Gaurav alias Sunny who stated that he had a brother by the name of Tarun alias Rahul (deceased). On 02.10.2022, Chetan Pasi, Hans Pasi, Amar Pasi, Hau, Dheeraj residents of Ram Nagar, Karan, Ankit, residents of ITI, Shiv Mahakal (petitioner) resident of Nanak Nagar, Sandhu Sardar, resident of Kheri Rangran, Hanny Balmiki, resident of Joginder Nagar, Abhishek alias Lalla, resident of New Nanak Nagar came to the spot armed with knives, swords and *chhuras*. They all caught hold of his brother-Tarun alias Rahul.

Ansh inflicted many blows with *Chhura* on the left arm and chest of his

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brother. Chetan and Amar were also armed with *chhuras* whereas Hanny Balmiki and Sandhu Sardar were armed with the *kirpans*. The other accused were armed with rods and *dandas*. All of them caught hold of his brother and were beating him. On hearing the noise, all the accused fled away with their respective weapons on their motorcycles and Chetan fled away in his Brezza car. His (complainant's) brother was taken by him and others to the Government hospital where he was declared dead.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. However, taking the allegations to be correct, no specific role whatsoever had been attributed to him. The statements under Section 161 Cr.P.C. of various witnesses do not further the case of the prosecution as none of the witnesses had attributed any specific injury to the petitioner. In fact, the arrested accused including juvenile-Ansh had also not stated in their respective disclosure statements that the petitioner had been inflicted any specific injury. The only role is of him having conspired with the main accused Ansh and Kunal to commit the offence in question. He further contends that even as per the post-mortem report of the deceased, there were only three injuries on the person of the deceased and injuries No.1 and 2 could be an outcome of one blow. Even otherwise, all the injuries found in the post-mortem report had been specifically attributed to Ansh alone. As the petitioner was in custody since 05.10.2022 and only 01 out of the 32 prosecution witnesses had been examined so far, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, had filed a reply dated 16.10.2023 which is already on record and a subsequent reply

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taken on record. While referring to the said replies, he states that the petitioner was duly named in the FIR and was an active participant in the commission of the offence. The petitioner had got recovered a dagger used in the commission of the offence. Further, the CDR and location pertaining to the mobile phone of the petitioner clearly established the fact that he was present at the time of the occurrence. He, however, concedes that the petitioner was in custody since 05.10.2022 and only 01 out of the 32 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, he is in custody since 05.10.2022 and only 01 of the 32 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Shiv Kumar @ Shiv Mahakal is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other case/crime other than the case(s) referred to in this order.

9. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses

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of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

December 12, 2023
sukhpreet

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