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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44980-2023 (O&M)

Date of decision: September 14, 2023

Shivam @ Lucky

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Dr. Pankaj Nanhera, Advocate,
Mr. Rahul Gautam, Advocate for 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.393 dated 10.05.2023, registered under Sections 324, 341, 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Section 307 of IPC added later on), at Police Station, HTM, Hisar.

2. Per prosecution version, on 05.05.2023, a telephonic message was received from the Control Room that one Aman was physically assaulted and admitted in Hospital. Due to heavy workload, his statement could not be recorded on 05.05.2023. Next day, on 06.05.2023, ASI Vinod Kumar along with SPO Vijender Singh reached Hospital. The doctor declared the injured as unfit to make the statement. No attendant was found present near the injured. MLR of the injured was obtained. On 08.05.2023, when Aman got better, his statement was recorded. He stated that he was/is class 10 student. He along with his brother Aniket were riding on a Scooty on 05.05.2023, when at about 11.00 a.m., two bike riders stopped them. Their names were Chirag and Lucky (petitioner). They started abusing him with filthy language. When he objected, both of them caught hold of him from behind. Chirag stabbed him in the stomach with a knife. He fell down on the ground and both the assailants fled from the spot with motor-cycle. His brother Aniket brought him to Hospital. An FIR was registered. During investigation, juvenile Chirag was apprehended. Petitioner was also arrested on 20.05.2023.

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3. Learned counsel for petitioner contends that petitioner was though present at the scene of occurrence, however, he was merely trying to save the other two students, who had got into a heated altercation. They later indulged physical assault on each other. In the process, though he was tried to save injured by holding him back, but same has been rather used against him that he had caught hold of him so that prime accused, namely Chirag could stab the injured. Learned counsel further submits that it is a case of aggression and counter-aggression between two sets of students. Petitioner has been unwittingly caught in the same merely because of his presence at the scene of occurrence.

3.1. Learned counsel also contends that alleged incident had occurred on 05.05.2023, but FIR in question was registered on 10.05.2023 with unexplained delay of 05 days. He further submits that a prompt lodging of information of the commission of offence at the first available opportunity is essential for a just investigation of the matter. Petitioner is not the main accused. Alleged recovery of knife has been falsely shown from the petitioner and co-accused/juvenile. The same was effected from a park i.e., a public area accessible to all. Petitioner is not involved in any other case.

3.2. Learned counsel also points out the affidavits dated 24.08.2023 (Annexures P-2 and P-3) to contend that injured as well as his father have stated therein that name of petitioner has been arrayed as an accused due to a misunderstanding, and petitioner is not involved in the case.

4. On the other hand, learned State counsel opposes the petition. He submits that petitioner along with other co-accused have committed a serious offence. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses. He, however, admits that petitioner is not involved in any other case.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On a Court query, learned State counsel, on instructions from ASI Vinod Kumar, submits that challan has already been presented on 17.07.2023. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations

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against petitioner are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 03½ months, being behind bars since 20.05.2023.

7. Petitioner 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. Injured as well as his father have already stated that name of petitioner is not involved in the case.

8. It is stated that petitioner 19-year old student. He is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having a fixed abode and clean antecedents, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. 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.

10. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned 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.

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

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

(ARUN MONGA)
JUDGE

September 14, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No