

234

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-S-2605 OF 2023 (O&M)
DATE OF DECISION: 20.09.2023****Narender****...Appellant****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Shivansh Malik, Advocate
For the appellant.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by learned trial Court vide impugned order dated 08.09.2023, appellant before this Court seeks his release as an undertrial in a case bearing FIR No20.9.23..202 dated 25.03.2023 registered under Sections 302, 323, 506 and 148 read with Section 149 IPC at Police Station, Shiva Colony, Rohtak (during investigation Sections 148, 149, 302 IPC were deleted and offences under Section 304 read with Section 34 IPC and Sections 3(2) (v) and 3(2) (va) of the Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 were added).

2. Per prosecution case, on 25.03.2023, the complainant, Naveen Kumar, along with Rajesh, had gone to Rahul Mistri's shop in the village of Maina to have his motorcycle repaired. That is where, the accused, Saurabh, began abusing him. However, when Rajesh attempted to calm the situation, Saurabh physically assaulted them with punches and kicks. After issuing threats, Saurabh returned to his home. Subsequently, the appellant, along with co-accused, arrived at the shop armed with sticks and iron rods. They inflicted injuries using whatever they had in their hands. Following this violence and threats, the appellant and the other accused retreated from the scene. Later on,

motorcycle. Upon learning about the altercation, they all went to Saurabh's house to reason with him and his family members. During this interaction, a brawl broke out, leading to Saurabh stabbing Manoj, the complainant's brother, with a knife. Additionally, Gaurav, one of the accused, hit Rajesh on the head with a pickaxe, and co-accused Kiran, attacked them with bricks while threatening them with severe consequences. Consequently, Manoj, the complainant's brother, lost consciousness and was rushed to PGIMS, Rohtak, where he was pronounced dead by a doctor. On the basis of aforesaid version in complaint, instant FIR was registered. In course of investigation, appellant was arrested on 26.03.2023. During investigation, a wooden stick was purportedly recovered from the appellant.

3. Learned counsel for appellant submits that appellant has been falsely implicated. The complainant concocted a false story. Even as per prosecution version, no injury has been attributed to appellant which was allegedly caused on the person of deceased-Manoj. He further contends that investigation is complete and challan has already been presented. Nothing is to be recovered from appellant. Appellant and his family members also suffered injuries during the free fight that took place between two groups resulting in unfortunate death of deceased-Manoj. He further submits that in fact, complainant along with his companions, who had trespassed into property of appellant, were the initial aggressors and appellant and his co-accused had merely acted in self defence.

4. Learned counsel further contends that co-accused of appellant, namely, Kiran have already been granted concession of bail by this Court vide order dated 04.09.2023 passed in CRA-S-1985-2023 and therefore, he seeks parity on the same ground. Further states that principal accused, namely, Rajesh has also already been accorded the concession of pre-arrest bail by this Court vide order dated 21.07.2023 (Annexure A-12) passed in CRA-S-1940-

2023, while appellant, whose case is on much better footings, is languishing in jail.

5. On the other hand, learned State counsel opposes the bail and contends that appellant has committed a serious crime. He further contends that case of appellant is different from that of co-accused Kiran as nothing was recovered from her, while a *danda*, which was used in commission of crime, had been recovered from appellant.

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

7. Learned State counsel, on instructions from ASI Ashok, submits that challan was presented on 24.05.2023. Investigation *qua* the appellant is complete and thus he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against appellant are matter of trial. There are total 26 witnesses and none has been examined so far. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for more than 5½ months, being in custody since 26.03.2023.

8. Appellant 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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

9. Appellant is stated to be a 52-year old responsible person having family comprising of wife and two children to look after. He is sole breadwinner and his family members are living in sheer penury in his absence. Being a family person and fixed abode, it is unlikely that he is flight risk or will flee from the trial proceedings.

10. Co-accused of appellant, namely, Kiran has already been granted the concession of bail by this Court. Another co-accused Rajesh has also been accorded the concession of pre-arrest bail by this Court, as aforesaid.

11. Considering the overall scenario, I am of the view that no useful purpose would be served to keep the appellant in further preventive custody. Accordingly, instant appeal is allowed. Impugned order dated 08.09.2023 passed by learned Additional Sessions Judge, Rohtak is set-aside. Appellant 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 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.

12. In case, appellant 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 appeal alone and learned trial Court shall proceed without being influenced with this order.

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

SEPTEMBER 20, 2023

Shalini

(ARUN MONGA)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No