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

CRM-M-46265-2023
Date of decision : 13.12.2023

YOGESH KUMAR

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

On 20.09.2023, the following order was passed :-

Reply by way of affidavit of Varun Dahiya, HPS, Assistant Commissioner of Police, Crime, Gurugram on behalf of the respondent State has been filed. The same is taken on record.

Prayer is for pre-arrest bail in FIR No.171 dated 11.11.2022, registered for the offences punishable under Sections 302, 120-B and 34 of IPC at Police Station Sohna, District Gurugram.

FIR came into being on the statement made by Bhim Singh son of Kanwar Singh, who claims himself to be an eye witness and alleged as under:-

“To The SHO Sahib, Police Station Sadar Sohna, Gurgaon. Sir, it is requested that I Bhim Singh s/o Kanwar Singh is resident of Village Damdama Police Station Sadar Sohna Gurgaon. I work as a farmer in the village. We are two brothers and three sisters. Both of us brothers

and all three sisters are married. About 1 year ago, my brother Arjun had a fight with Rajan s/o Dhanpal, Jagat s/o Dhanpal and Ishwar s/o Jagat Singh over dogs. Regarding that rivalry, today on 10.11.2022 at around 10:14 pm. I was present of my house in Damdama and I got a call from Virender s/o Deshraj that there was a fight going on with your brother near the Bhumaya temple near the tradesman's house. As soon as I heard the call, I and my uncle Mukhram s/o Handu and Praveen s/o Hetram immediately reached the place of fight. I saw Sandeep alias Sujan s/o Jagat Singh R/o Damdama, Anand s/o Jagat Singh R/o Damdama, Manoj alias Tooka s/o Shri Phire R/o Damdama and DJ wala Pawan R/o Bahalpa started beating my brother with iron rods and sticks and stones. Anand and Sandeep were carrying iron rods and Manoj had a stick and Pawan was hitting my brother Arjun with the stone, which he was holding. We made Arjun free from them and since my brother was badly injured, we started handing him and all four accused took advantage of the darkness and ran away from the spot and I and my uncle brought Arjun in an unconscious condition in my private car to the government hospital, Sohna, who was referred by the doctor to the higher hospital and we brought him from the government hospital, Sohna to Park hospital and admitted him. After some time, the doctor told that Arjun had died due to severe injuries and excessive bleeding. Strictest action should be taken against the persons who caused the above injuries. Sd/0 Bhim Singh. 11/11/22 Police Action: Today I ASI is present at the Police Station and a ruqa from the doctor at the Police Station regarding Arjun s/o Kanwar Singh r/o Damdama, came from the hospital for treatment due to injuries sustained in the fight, according to which, he has total 5 injuries in which Injury No.1 is on the forehead adv ncct Head, Injury No.2 is swelling, Injury No.3 is swelling on left leg Adv x-ray Ortho and Injury No.4 is Mouth Nose Foot Surgeon Opinion Injury, No. 5 L/W Present Over Self

3x1 cm Refer Higher Center is written on which I ASI along with co-police official Paramjeet 4613 or HGH left for Gurugram. On the way, an information was received on phone from MHC Police Station that the injured Arjun s/o Kanwar Singh r/o Damdama, has reached Park Hospital, then, I ASI reached Park Hospital Gurugram for proceedings and obtained the ruqa from the hospital as BROUGHT DEAD and found deceased Arjun's brother Bhim Singh s/o Kanwar Singh r/o Damdama, present in the hospital who submitted a written application. From the details of the application and the result of MLR BROUGHT DEAD the offence under Sections 302, 323, 34 IPC is made out and CT Paramjeet 4613 is being sent to the police station to get register an FR. After registering the case, the case number should be intimated. Special report be prepared and sent to the higher authorities for information and recommended to reach the SEEN OF CRIME with team and SHO Saheb be also informed to reach the spot. I ASI is busy in investigation as per 174 CrP.C. Today at Park Hospital GGM ASI MAHENDER 349 PS SADAR SOHNA DT 11.11.2022, a note on which FIR No. 171 dated 11.11.2022 under Section 302, 323, 34 IPC is registered, copies of the special report of the FIR were prepared on the computer by encoding them and the special report of the FIR would be sent through e-mail to the service of the Illaqa Magistrate and higher officials. After registering the case, the police file marked with the original application is being sent to the investigating officer on the spot through C. Paramjit No.4413. This case is being registered in the presence of SI Rambir 1070. This case is being filed late due to malfunction of lighting in Police Station.”

From the statement made by the complainant, it is evident that he was explicit, unambiguous and clear that there were four persons namely Sandeep @ Surjan s/o Jagat Singh, Anand s/o Jagat Singh, Manoj @ Tooka s/o Shri Phire and DJ Wala Pawan, who gave beatings to his brother Arjun. There is not even a whisper that

there is any other person present on the spot. However, the prosecution claims that after arrest, the accused suffered confession while in police custody and in the said statement, they disclosed that the present petitioner was also involved in the crime.

Counsel for the petitioner submits that the complainant was none other, but the brother of the deceased. Thus, it is highly improbable that he will not name the actual culprit when he himself was witnessed to the incident. He submits that the statement made by the complainant is so explicit that there is not even a whisper that there was some other known or unknown person present on the spot. He further submits that the confessional statement made by the accused while in police custody have no force and law in light of Sections 25 and 26 of the Evidence Act and the same cannot be relied upon to implicate the petitioner as the same are not only inadmissible but also are in total contradiction to the statement made by the complainant, who happens to an eye witness.

Adjourned to 13.12.2023.

In the meantime, in the event of arrest, the petitioners shall be released on interim bail subject to their furnishing personal and surety bonds to the satisfaction of the arresting officer/Investigating Officer. As and when called, the petitioners shall join the investigation. They shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C.”

2. Today, Ld. State Counsel on instructions from PSI Kuldeep submits that though the petitioner has joined investigation however *danda* is yet to be recovered.

3 On the inquiry of the Court as to how the *danda* alleged to be in possession of the petitioner would aid the investigation, State Counsel submits that the petitioner hit the deceased on legs with the said *danda*.

4. From the allegations levelled in the FIR, the complainant claimed that :

“xx I saw Sandeep alias Sujan s/o Jagat Singh R/o Damdama, Anand s/o Jagat Singh R/o Damdama, Manoj alias Tooka s/o Shri Phire R/o Damdama and DJ wala Pawan R/o Bahalpa started beating my brother with iron rods and sticks and stones. Anand and Sandeep were carrying iron rods and Manoj had a stick and Pawan was hitting my brother Arjun with the stone, which he was holding. We made Arjun free from them and since my brother was badly injured, we started handing him and all four accused took advantage of the darkness and ran away from the spot and I and my uncle brought Arjun in an unconscious condition in my private car to the government hospital, Sohna, who was referred by the doctor to the higher hospital and we brought him from the government hospital, Sohna to Park hospital and admitted him.”

5. In view of above this Court does not find any substance in the plea raised by the State Counsel. There are specific allegations raised by the complainant who claims to be the eye-witness against Sanjdeep @ Sujan s/o Jagat Singh, Anand s/o Jagat Singh, Manoj @ Tooka s/o Shri Phire and DJ wala Pawan. It is specific case of the complainant that the aforesaid persons were beating his brother with the iron roads and sticks.

6. In the light of above, without commenting on the merits of the case and in view of the aforesaid fact, order dated 20.09.2023 is made absolute, subject to the conditions as enumerated under Sections 438(2) Cr.P.C.

7. This order should not be treated as "blanket" order. It will not

be read granting the petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

8. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency to investigate into the charges against the petitioner.

9. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.

10. It will be open to the police or the investigating agency to move this Court for a direction under Section 439(2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.

11. Petition stands disposed off accordingly.

December 13, 2023
Dpr

(Pankaj Jain)
Judge

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