

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

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CRM-M-50616-2022 (O&M)

Reserved on: 17.05.2023

Pronounced on: 22.05.2023

WARIS

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ram Singh Chandhary, Advocate and
Mr. Afzal Hussain, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

Mr. Nafeesh Ahmed, Advocate
for the complainant.

HARNARESH SINGH GILL, J.(Oral)

Through this second petition, the petitioner seeks regular bail in case bearing FIR No.82 dated 18.03.2021, registered at Police Station Punhana, District Nuh, under Sections 302 and 34 IPC, the first one having been dismissed as withdrawn on 04.04.2022.

Learned counsel for the petitioner submits that the petitioner, who was a driver of JCB, has falsely been implicated in the present case; that Hamid (since deceased) died in a road side accident, which had been given the colour of a murder; that as many as five accused were arraigned in the present FIR, but during investigation four of them have been exonerated; that the challan has already been presented; that out of 12 prosecution witnesses, only 01 witness i.e. complainant has been examined so far and that the petitioner has been in custody since

18.03.2021.

Learned counsel for the petitioner further submits that as per the version of the complainant recorded in the FIR, the petitioner reached the spot on a JCB Machine and had used the loader of the said JCB machine to cause repeated attacks on the person of the deceased and that the petitioner was provoked by co-accused, namely, Imran and Sehrun to do so. He further submits that as per the postmortem report, all the injuries on the person of deceased were either contusions or abrasions and there was no injury with a sharp-edged weapon and he, thus, vehemently argues that had the loader of the JCB Machine been used for committing the murder, the body would have badly crushed and Hamid would have died on the spot itself. Still further, it is argued that if Hamid had died on the spot, there was no occasion to take him to the Government Hospital for treatment.

Learned counsel for the petitioner further submits that as per the contents of the FIR, the complainant, who is the brother of the deceased, left the place of occurrence and had gone to Punhana (which is about 10 km away) and it is beyond comprehension as to why a person would leave his brother dying instead of taking him to the hospital or saving him from the assailants; that the complainant narrated the entire version to his brother, namely, Akhtar and he, thus, argues that the complainant is not an eye-witness and rather is a projected witness. Still further, it is submitted that Akhtar (brother of the complainant and deceased) has not been cited as witness and there is no explanation to the

same by the prosecution. Still further, it is submitted that the complainant has alleged that it was because of an old rivalry, the petitioner along with other co-accused had murdered Hamid (deceased); that the deceased was married with Sehruna (daughter of uncle of the petitioner) way back in the year 2017 and there is no reason as to why the petitioner would have any grouse with the deceased, as alleged by the complainant.

While placing reliance upon Annexures P-6 to P-9 (affidavits of the persons present at the spot and the office bearers of the Gram Panchayat, Punhana), learned counsel for the petitioner argues that the same have not been made part of the record by the prosecution, for the reasons best known to them. He further argues that since there is no eye-witness in support of the alleged version that the petitioner had committed the crime, the incarceration of the petitioner is no longer justified.

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel and the learned counsel for the complainant do not dispute the custody period of the petitioner. They, however, submit that the petitioner along with other co-accused had brutally murdered Hamid by using the loader of the JCB machine. It is further contended that a common man can easily make out the gruesome crime committed by the petitioner, when the repeated attacks were committed by him with the loader of the JCB Machine, driven by the petitioner.

Learned counsel for the complainant argues that in order to

save his life and out of fear, the complainant ran away from the spot and thus, the argument of the learned counsel for the petitioner that the complainant ought to have stayed back, does not hold any ground. It is further argued that when the complainant along with his brother, namely, Akhtar, came back at the spot, they learnt that Hamid was taken to hospital by some other persons. He further argues that there were as many as 22 injuries on the person of the deceased, which were sufficient to cause death in an ordinary course and that as per the MLR, the ribs were fractured and there were lacerated marks on both lungs. Still further, it is argued that before marriage the deceased was having relationship with the sister of the petitioner, which is why the petitioner was having a grudge against the deceased, despite the fact that, at one stage, Panchayat was conveyed and the matter was compromised between the parties and the said compromise was duly signed by the petitioner as well.

I have heard the learned counsel for the parties.

In this case, the allegations are very serious. The petitioner is alleged to have caused repeated multiple attacks with the loader of the JCB Machine on the person of Hamid (deceased), when Hamid was forcibly put under loader of JCB Machine by co-accused, namely, Imran and Sehruna and before that Hamid was given baton blow injuries by Javed and later by other co-accused. The ferocity of the crime can be imagined by taking into account the use of loader of the JCB Machine. It has come on record that as many as 22 injuries were found on the person of the deceased. Though, the learned counsel for the petitioner has tried

to persuade this Court by referring to the MLR/postmortem report that the injuries were only contusions and abrasions, yet this Court does not find any substance in the same.

In view of the above, no ground is made out to grant the concession of regular bail to the petitioner.

Dismissed.

22.05.2023

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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