

234 2nd case

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50772-2023 (O&M)
Date of decision:11.10.2023

Budhani and others

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Lamba, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Learned counsel for petitioners, at the outset, submits that he seeks to withdraw instant petition qua petitioner No.3-Vipin as he has been granted concession of regular bail by this Court vide order of even date passed in CRM-M-50366-2023.

Dismissed as withdrawn *qua* petitioner No.3, as prayed for.

2. Following the denial of bail by learned trial court, the petitioners are now before this Court seeking their release as undertrials in a case with FIR No.24 dated 27.01.2018, registered under Sections 323, 302 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') at Police Station, Bhuna, District Fatehabad.

3. An FIR was registered on 27.01.2018 based on the statement of the complainant, Krishan Kumar (father of the deceased), who alleged that he was working at Shiv Bhole Bricks Company, Nehla. His family, including his 22-year-old son, Upender, and his relatives, had also come to the brick kiln. On 26.01.2018, a marriage function for Budhani's daughter took place, and Krishan Kumar was called to prepare food for the event. At around 3:00 p.m., Budhani, Mithlesh, and Vipin began to abuse him. On hearing the commotion, his son Upender and his nephew Shiv Lal came to his aid, trying to separate him from the assailants, who then started assaulting them. Budhani was wielding a stick, Vipin had a knife, and Mithlesh also had a stick. Budhani struck Krishan Kumar on the head and his right wrist with the stick, while Mithlesh hit Shiv Lal on the

head. When Upender attempted to intervene, Vipin, armed with a knife, and Budhani and

Mithlesh, wielding sticks, attacked Upender indiscriminately. Upender sustained severe injuries and was rescued by other laborers at the brick kiln. Subsequently, the brick kiln owner called for an ambulance, and Upender was transported to Sahara Hospital, Hisar, where he succumbed to his injuries on 27.01.2018 at approximately 7:00 a.m. An FIR was filed, and the case was investigated. The petitioners were arrested on 28.01.2018 and have remained in custody since then.

4. The learned counsel for the petitioners argues that no specific role has been attributed to them. He asserts that the complainant and the injured eyewitnesses have already been examined, and they did not support the prosecution's case; they were declared hostile. The petitioners are not involved in any other cases, and their presence at the alleged incident site has not been verified.

4.1 He further contends that the petitioners do not require further custodial interrogation. There is no likelihood of the petitioners tampering with evidence or influencing prosecution witnesses. The petitioners are entirely innocent and have been falsely implicated in the case.

5. On the other hand, learned State counsel vehemently opposes the petition, expressing concerns about the possibility of the petitioners fleeing from trial proceedings if granted bail. He acknowledges that the allegations against the petitioners are serious but concedes that no other case is pending against them.

6. I have heard the opposing arguments of the learned counsels for the parties and have reviewed the case file.

7. In response to a query from the Court, as instructed by SI Dilbagh Singh learned State counsel informs that charges were framed on 11.05.2018 after the challan was filed. Investigation concerning the petitioners is complete, and they are not required for custodial interrogation. At this stage, the allegations against the petitioners are subject to trial. Of the twenty-one prosecution witnesses, seven have been examined so far, and the case is scheduled for 13.10.2023. The trial's progress has been slow, and it is expected to take a considerable amount of time. Bail serves the purpose of allowing an accused to

remain free until their guilt or innocence is determined. In contrast, the petitioners have been in detention since January 28, 2018, for more than 05 years and 08 months.

8. The petitioners’ continued preventive custody is based on an unsubstantiated suspicion that they might tamper with evidence or influence witnesses.

9. Petitioner Budhani is stated to be 38-year-old family man whereas petitioner Mithlesh is 32 year-old. With a family to support, a fixed abode, and a clean record, it is unlikely that they pose a flight risk or will flee from trial proceedings.

10. 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 petitioners in further preventive custody.

11. Accordingly, petitioners are ordered to be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where their case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. In case, petitioners are found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their 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 bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

11.10.2023
vandana

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