

204

2023:PHHC:139878

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

CRM-M-52313-2023

DECIDED ON: 2nd NOVEMBER, 2023

SONU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satbir Singh Gill, Advocate for the petitioner.

Mr. Safia Gupta, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.424, dated 19.12.2020, under Sections 302/34 of IPC, 1860, registered at Police Station Sadar Sirsa, District Sirsa.
2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant FIR, wherein no specific role has been attributed to him as is evident from the narration of the same, which reads as under:-

“Statement of Rajesh S/o Dharmpal Jandhu, R/o Madhosighana, aged 30 years, Mob. no. 95419-91800 stated that I am resident of above mentioned address and working as a farmer. I have a namkeen Shop in front of Jandhu Petrol Pump. Hanuman S/o Mohan Lal R/o Madhosighana runs stall of egg etc. in front of my shop. There is a country liquor shop on the other side of Gudhiya Road in front of my shop. Along with this Akshay S/o Khiyali, Rajesh S/o Dalip both Valmiki R/o Madhosighana sell egg etc. at Kiosk. On intervening night of 18/19.12.2020 at around 9:40 PM, I have heard that Hanuman S/o Mohan Lal R/o

Madhosighana, bought quarter of liquor, above named Rajesh and Akshay bought half of liquor from the liquor shop. Thereafter, there was a fight among Rajesh, Akshay and Hanuman over some issue. Sonu S/o Ramesh, Valmiki, R/o Madhosighana was also present at the spot. Hanuman telephoned me saying that you come quickly, above named people are beating me. At that time I was present at my home at Dhani. When I was coming from my Dhani towards place of occurrence, on the way Rameshwar S/o Kashi Ram who was drunk met me on the way, who was on Motorcycle, he told me that Hanuman has been murdered. I was going to your Dhani to call you. I alongwith Rameshwar came back at the spot. Then above named Sonu brought Ambulance from Govt. Hospital Madhosighana. I saw that near the Kiosk of above said Akshay and Rajesh, the dead body of Hanuman was laying. Blood had oozed from mouth, head etc. The people who came in the Ambulance after seeing has told that Hanuman had died. Above mentioned Akshay, Ramesh, Sonu etc. have killed Hanuman by hitting him with sticks and bricks, mortars/ pounders. After investigation strict legal action be taken against who actually killed Hanuman by injuring. I recognize the dead body of Hanuman called me on my Mobile no. 95419-91800 from his mobile number. I do not remember Hanuman's Mobile number. My Mobile no. is switched off due to low battery. The person working on liquor shop told me about taking liquor, who went somewhere after closing liquor shop, whose name is Pappu. Statement got recorded, read, heard same is correct.”

3. On the strength of the aforesaid contents recorded in the FIR as well as subsequent investigation of the case, he asserts that in fact the petitioner was one, who called for the ambulance and took the deceased in a serious condition to the Hospital but has been nominated in the present case by the complainant, who was not present at the spot, where the occurrence took place.

4. Learned State counsel has produced the custody certificate of the

petitioner, which is taken on record, to demonstrate that he has suffered incarceration for a period of 02 year, 10 months and 10 days. She prays for dismissal of the present petition urging that the petitioner has got recovered a broken piece of brick, which has been used in the commissioning of offence, which shows that the petitioner was actively involved in committing the murder of Hanuman (since deceased).

5. Having heard learned counsel for the respective parties.

6. On a query put to learned State counsel, this Court is of the view that there is no material to establish at this stage, which can be termed incriminating against the petitioner to directly connect him with the use of brick, which is allegedly hit on the head and further establish that as a result of that injury, Hanuman died.

7. This Court also sanguine of the fact that the petitioner is the one, who has taken the deceased to the hospital after calling the ambulance and the said fact has not been denied by the State counsel before this Court so far. All these facts and material are not sufficient to decide the guilt of petitioner and other accused persons, wherein one of the accused namely Rajesh has already been granted the concession of regular bail by this Court vide order dated 23.02.2023, passed by this Court.

8. In the light of these factual aspects wherein no direct incriminating material is coming forth which could be detrimental to the relief sought in the instant petition and can be used against the petitioner.

9. As per the custody certificate, the petitioner is involved in another case of NDPS i.e., FIR No.80/2019, under Section 21 of NDPS Act, 1985, registered at Police Station Sadar Sirsa, Sirsa, wherein the appeal of the petitioner stands disposed of as having undergone after considering remissions. Another aspect to be borne in mind that charges were framed on 11.08.2023 and out of 19 prosecution witnesses only one has been examined so far, which is sufficient for this Court to form an opinion that trial will take long time, which would curtail the right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India.

10. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.
11. In the afore-said terms, the present petition is hereby allowed.
12. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

02th NOVEMBER, 2023
sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>