

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

CRM-M No.53019 of 2023 (O&M)

Date of decision : 02.11.2023

Rajpal

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Sandeep Kumar Yadav, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.645 dated 21.11.2017 registered under Sections 148/149/302/323/506 IPC (Section 201 IPC added later on) at Police Station City Mohindergarh, District Mohindergarh.

2 Learned counsel for the petitioner relies upon order dated 09.08.2023 passed in CRM-M-23920-2023 whereby co-accused namely Sunita Devi and Krishan have been ordered to be admitted to bail observing as under :-

“Status report by way of an affidavit on behalf of respondent-State of Haryana along with Annexures R-1 to R-3 has been tendered in course of hearing, which is taken on record. Copy thereof has been supplied to learned counsel for the petitioners.

2. After being declined bail by the trial Court, petitioners before this Court seek their release as undertrial in case bearing FIR No.645 dated 21.11.2017, registered under Sections 148, 302, 323, 506 read with Section 149 of the Indian Penal Code, 1860 (for short ‘IPC’), (Section 201 IPC added later on) at Police Station, City Mohindergarh, District Mohindergarh.

3 Per prosecution, complainant Kamal Singh stated on 15.11.2017, at about 8.00 p.m. his cousin Satyawar, who plies an auto-rickshaw, came to his house and when he was parking his rickshaw, suddenly some co-villagers, namely, Ram Kishan @ Subhash, Rajpal, Gulab, Krishan (petitioner No.2), Sunita (petitioner No.1) and Sangeeta, armed with lathi, Jailly and axe, came there and in his presence openly attacked Satyawar, now deceased. Co-accused Ram Kishan @ Subhash, who has wielding an axe in his hand, hit Satyawar on his head, whereas Rajpal and petitioner No.2-Krishan gave Jailly blows to Satyawar. He, his father Dhanpat and brother Manish tried to rescue him but the assailants started giving physically assaulting them also. Co-accused Gulab gave Jailly blow to his father while petitioner No.1-Sunita and co-accused Sangeeta inflicted injuries with lathi and they also pelted stones at them. The assailants were in inebriated condition at that time. Complainant, along with his family members and Manjeet son of Rohtash took Satyawar to Government Hospital, Mohindergarh, but the doctor on duty, referred Satyawar to PGIMS, Rohtak. During treatment, Satyawar succumbed to his injuries in PGIMSRohtak.

3.1 On the aforesaid complaint, formal FIR was registered. During investigation, co-accused Gulab Singh and Ram Kishan were arrested. Remaining accused Sunita (petitioner No.1), Krishan (petitioner No.2), Sangeeta and Rajpal were declared proclaimed offenders on 10.09.2018 during pendency of the trial. FIR No.67 dated 03.03.2021, was also registered under Section 174-A IPC at Police Station, City Mohindergarh. Later on, during further investigation petitioners-accused joined the investigation and were formally arrested. Remaining accused Sangeeta and Rajpal also subsequently surrendered in court. They were also arrested and thus joined investigation.

4. Learned counsel for the petitioners submits that petitioners have been falsely implicated in this case. They have no concern with the alleged offence. Nothing is to be recovered from the petitioner. He submits that petitioners did not cause any injuries to the deceased. If at all, same were inflicted by co-accused Ram Kishan @ Subhash. Petitioner No.1 is in custody since 01.12.2022 and petitioner No.2 Krishan is in custody since 15.12.2022. Challan was filed in December, 2022 and charges have been framed. There are 23

prosecution witnesses and trial will take long time to conclude.

4.1. Learned counsel for the petitioners relies on testimony of PW1 to PW3, who are stated to be star prosecution witnesses. He points out that they have not supported the prosecution version. Same is also stated in para 6 of the reply/report. Prosecution has itself conceded therein that they said PWs have not supported the prosecution version qua petitioners. They were declared hostile by learned trial Court. Learned counsel further canvasses that since the complainant and eyewitnesses have not supported the case of prosecution, chances of conviction are fairly bleak and further detention of petitioners is not justified. Furthermore, petitioners have their respective families to look after, contends the learned counsel.

5. On the other hand, learned State counsel opposes the bail petition. He submits that petitioners were specifically named in the FIR. Further submits that instant is a heinous crime of murder in which at this stage, it is not possible to say that petitioners have been falsely involved in this case. They were declared proclaimed offender in the present case. However, he admits that complainant and material witnesses have already been examined and they have not supported the prosecution version.

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

7. On a Court query, learned State counsel submits that there are total 23 witnesses. Complainant and material witnesses have already been examined and they have not supported the prosecution version. Petitioners are not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioners are a matter of trial at this stage. Conclusion of trial is still likely to take long time. Whereas, petitioner No.1 has already been languishing in jail for the past more than 08 months and petitioner No.2 for the past around 07 months in preventive custody, being behind bars since 01.12.2022 and 16.1.2022 respectively.

8. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/or influence witnesses.

9. *Petitioner No.1 is stated to be 38-year old family woman and has two children to look after, who have been deprived of care and protection of their mother and her family is living in sheer penury in her absence. Petitioner No.2 is stated to be 35 years is an agriculturist by profession. He has added responsibility of looking after his family. Both petitioners having family responsibilities and fixed abode pose no flight risk or any threat to the society at large.*

10. *Considering the overall scenario, particularly the fact that complainant and material witnesses have not supported the prosecution version, but at the same time, without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioners in further preventive custody in instant case.*

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

12. *In case, petitioners are found to be involved or get 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 the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.*

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

3 Learned counsel for the petitioner submits that Krishan as well as the petitioner both are similarly situated so far as the allegations in the FIR are concerned as both have been accused of having given *Jelly* blows.

4 Learned State counsel is not in a position to controvert the aforesaid factual assertions made by the counsel for the petitioner based on records of the case.

I have heard learned counsel for the parties and have gone

through the records of the case.

6 Without commenting on the merits of the case by granting parity with co-accused and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

7 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

02.11.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No