

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

207

CRA-S-2602 of 2022 (O&M)

Date of Decision: 31.01.2023

Suresh Kumar @ Biyo

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. D.S. Virk, Advocate
for the appellant.

Mr. Rajneesh Chadwal, AAG, Haryana.

VIKAS BAHL, J (ORAL)

CRM-47758-2022

This is an application for condonation of delay of 14 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 14 days in filing the present appeal is hereby condoned.

CRM-47759-2022

Application is allowed, as prayed for.

CRA-S-2602 of 2022

This is a criminal appeal filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 23.09.2022 passed by the Court of learned Additional Sessions Judge, Special Court, Kaithal, dismissing the bail application of the present appellant in FIR No.16 dated 23.01.2021 under

Sections 148, 149, 302, 323, 201 IPC and Section 3(2)(v) of the SC/ST Act, 1989.

Learned counsel for the appellant has submitted that the appellant had earlier filed a regular bail application under Section 439 Cr.P.C. for grant of regular bail and the same was dismissed as withdrawn on 18.11.2022 with liberty to file an appeal under section 14-A(2) of the SC/ST Act and thus, the present appeal has been filed by the appellant.

It is submitted that the appellant is in custody since 27.01.2021 and out of 35 witnesses, none have been examined and thus, trial is likely to take time. It is further submitted that as per the FIR dated 23.01.2021, a fight had taken place between two groups at the time of a marriage function and thereafter, as per the complainant, one of the persons had given a gandasi blow on the head of the grand-father of the complainant. It is submitted that there is no mention in the FIR that there was any previous enmity between the two groups and as per the prosecution case, the injury on the head with the gandasi was given by Sukha, co-accused of the appellant. It is further submitted that in the FIR, no other injury other than the injury on the head with a gandasi, which has been attributed to Sukha, has been alleged. It is stated that in the statement dated 23.01.2021, the brother of the complainant has improved the version given by the complainant and he has stated that Sukha, co-accused had given a gandasi blow on the head of the grand-father of the complainant and the present appellant had given danda blow on the leg of his grand-father. It is further submitted that as per the post-mortem report dated 23.01.2021, injury No.1 on the head is stated to be the cause of death and the said injury has been caused by a sharp edged weapon. In the post-mortem report, total two

injuries have been shown and the second injury is stated to be multiple reddish abrasions of varying sizes present on the upper aspect of right foot. It is stated that the said injury is neither grievous nor is fatal.

Learned counsel for the appellant has further referred to the status report filed by the State and has submitted that even as per the disclosure statement of the appellant, reference of which has been made in paragraph 3 of the status report, it is apparent that one Ankhi and his friends had given brick and fist blows to the present appellant and co-accused Sukhi. It is submitted that the best case of the prosecution against the appellant is that the appellant had given a danda blow on the leg of the deceased which is not stated to be the fatal injury nor stated to be an injury declared to be grievous in nature and was not specifically mentioned in the FIR. Learned counsel for the appellant has prayed that keeping in view the custody and stage of the trial, the appellant be granted the concession of bail.

Learned State counsel, on the other hand, has opposed the present appeal for bail and has submitted that the present appellant is specifically named in the FIR and he has suffered a disclosure statement confessing that he had also participated in the occurrence and even the danda from which he has caused the leg injury to the deceased, has been recovered from the present appellant. It is further submitted that in the present case, offence under Section 149 IPC would be attracted and thus, the petitioner would be liable for the offences in question. It is further stated that the the appellant is also involved in three other cases and thus, he is a habitual offender and does not deserve the concession of regular bail.

Learned counsel for the appellant, in rebuttal, has submitted

that even as per the status report, the appellant has been acquitted in one of the FIRs and the other two FIRs include an FIR under the Excise Act and the second FIR is under Sections 148, 149, 323 and 458 IPC and the appellant is on bail in the said FIRs and he has relied upon the judgment of Hon'ble Supreme Court in “Maulana Mohd. Amir Rashadi vs. State of U.P. and another”, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the appellant cannot be rejected on the ground that the appellant is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has perused the paper book.

Keeping in view the above facts and circumstances moreso, the fact that the appellant has been in custody since 27.01.2021 and the investigation is complete and the challan has been presented and there are 35 witnesses and none have been examined and thus, trial is likely to take time and also the fact that the fatal injury on the head with a gandasi blow has been attributed to the co-accused Sukhi and is not attributed to the present appellant and even as per the present FIR dated 23.01.2021, no injury other than the said injury has been attributed to any person and even as per the post-mortem report dated 23.01.2021, it is the head injury, which has been attributed to Sukhi, which has been stated to be the cause of death

in the present case and also the law laid down in *Maulana's* case (supra), the present appeal is allowed and the appellant is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the appellant to threaten or influence the complainant of any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the appellant.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present appeal.

31.01.2023
D.Bansal

(VIKAS BAHL)
JUDGE

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