

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

CRM-M-60486-2022 (O&M)

Date of decision: 23.08.2023

RATNESH

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sushil Kumar Verma, Advocate
for the petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana
for the respondent-State of Haryana.

HARSH BUNGER, J.

Petitioner (Ratnesh) has filed this petition for grant of regular bail in case FIR No.100 dated 14.04.2022, under Section 302 of the Indian Penal Code, 1860 registered at Police Station Kalanwali, District Sirsa.

2. Status report dated 03.05.2023 by way of an affidavit of Sh. Virender Singh, HPS, Deputy Superintendent of Police, Ellenabad, on behalf of respondent/State of Haryana has been filed, which is already on record.

3. Briefly, the above said case FIR has been registered on the complaint of one Badam Kohli son of Heera Lal, who stated that he used to do work of making cement bricks at S.D. Marbel Factory, Kalanwali and one Umesh son of Rajpal, resident of Village Bisauli, District Badaun (U.P.) was also working there along with few other persons. It was alleged that on 13.04.2022, at around 9:30 p.m., Umesh and Ratnesh (petitioner) were sitting

at S.D. Marble Factory and after sometime, they started using abusive language towards each other and then Ratnesh (petitioner) picked an iron rod laying in the factory and gave a blow on the head of Umesh Kumar, due to which, Umesh Kumar fell down there and Ratnesh (petitioner) fled away with an iron rod from the spot. It was stated that the complainant arranged for a vehicle and took Umesh Kumar to Government Hospital, Sirsa; where doctor declared him brought dead. As per the complainant, the reason for the enmity was that Umesh Kumar used to hurled abusive words to Ratnesh (petitioner) in the name of his mother and sister. Accordingly, the afore-said case FIR was registered.

4. As per the status report, the investigation of the case was conducted and the statements of the witnesses were recorded. The post-mortem of the dead body was conducted from Civil Hospital, Sirsa and inquest proceedings under Section 174 of the Cr.P.C. were carried out by the police. The petitioner is stated to be arrested on 14.04.2022; wherein, he made a disclosure statement stating that Umesh Kumar, used to abuse him in the name of his mother and sister and even on 13.04.2022, said Umesh Kumar had hit a flamed *Biri* on his hand and at night around 9:30 p.m., while the petitioner was in factory then Umesh Kumar (since deceased) again abused him whereupon, he is stated to have lost his temper and picked up an iron rod from the factory and hit on the head of Umesh Kumar, due to which, he fell down. Thereafter, the workers of the factory namely, Badam Kohli and Sonu etc. came there and then he ran away from the spot along with the iron rod. It is further stated in the status report, the petitioner got demarcated the place and also got recovered the iron rod used in the occurrence; whereupon, the medical opinion regarding the injuries of the

deceased with the use of iron rod (as recovered in this case) was obtained. During the course of investigation, even the clothes of the deceased Umesh Kumar as well as the iron rod recovered from the petitioner were deposited with the Regional Forensic Science Laboratory (RFSL), Hisar; whereupon, the RFSL report dated 20.06.2022 (Annexure R/2) was received.

5. Learned counsel for the petitioner submits that the petitioner is a peace loving and law abiding citizen. It is submitted that even as per the story narrated in the FIR, the alleged occurrence has taken place due to the sudden provocation which happened at the spur of the moment and the alleged injury was without any intention to murder the deceased. Learned counsel further submits that the FIR lodged against the petitioner is only a mere hearsay and an afterthought story and there is no eye witness of the alleged occurrence. It is submitted that the petitioner is not involved in any other case and the FIR has been lodged by the police at the instance of the complainant party in a blind murder case by showing false implication of the petitioner. It is submitted that the petitioner is a young man of 19 years of age and all the allegations in the FIR are false and frivolous and no such incident ever took place, as has been mentioned in the FIR. It is contended that the alleged iron rod has been foisted upon the petitioner. The investigation in this case is complete; challan stands presented; charges have been framed and there are total 16 witnesses cited in this case; thus the trial is likely to take some time. Learned counsel for the petitioner has also placed on record the copies of the statements of the complainant and one witness as Annexures P-4 and P-5, to contend that the material witnesses have not supported the story of the prosecution. It is stated that the petitioner

is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

6. Per contra, learned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence. While referring to the status report, learned State counsel has submitted that the petitioner has made a disclosure statement wherein he had admitted the injury inflicted upon the deceased (Umesh Kumar). It is submitted that the occurrence was witnessed by the complainant-Badam Kohli. Learned State counsel further submits that although the investigation in this case is complete and charges have been framed on 02.08.2022; however, the material witnesses are yet to be examined including the eye-witnesses, who are the co-workers of the petitioner. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

7. I have heard learned counsel for the parties and perused the paper book as well as status report dated 03.05.2023.

8. As per the FIR, the petitioner is stated to have given an iron rod blow on the head of deceased-Umesh Kumar on 13.04.2022 at around 9:30 p.m., whereupon Umesh Kumar fell down and thereafter, the petitioner is stated to have run away from the spot along with the iron rod. Said Umesh Kumar, had subsequently expired; whereupon, the inquest proceedings were conducted by the police and the petitioner was arrested. During the interrogation, the petitioner is stated to have suffered a disclosure

statement, which reads as under :-

“ Stated that I am doing work at SD Marble Factory since last 11-12 years. Umesh Kumar son of Rajpal, resident of Vaishali, Distt. Badau (UP) is also working in the said factory. Umesh Kumar used to take drink in the day timing and also used to abuse me with name of my mother and sister. On account of this I have grudge with Umesh Kumar. On 13.4.2022 in the noon, Umesh Kumar again abused me with name of mother and sister and also hit the flamed Biri on my hand. I had earlier grudge against him. In the night at 9:30 pm I was in the Factory, then Umesh again abused me with name of mother and sister and then I lost my temper and picked up a thick iron rod from the factory and hit on the head of Umesh Kumar due to which he fell down. Thereafter the workers of the factory namely Badam Kohli and Sonu etc. came there. Thereafter I alongwith the iron rod ran away from there. After that I boarded in the bus coming from Dabwali and reached at Sardulgarh. Naresh Kumar of our village is residing at Sardulgarh. I went to his house and place the iron rod in his house and slept there. Today I had come to my house to take the clothes and money and near the Bus Stand police had apprehended me. The iron rod used in the murder has been hidden by me in the house of my friend Naresh Kumar at Sardulgarh. Nobody except me knows about it. I can get recover the iron rod used in the murder from the house of Naresh Kumar. I can get the demarcation of the place at SD Marble Factory, Kalanwali, where the murder of Umesh Kumar was committed by causing iron rod blow on his head.”

9. In pursuance of the afore-said disclosure statement and upon demarcation of the place, the iron rod used in the occurrence is stated to have been recovered; whereupon, even the FSL report has been received. As per the FSL report (Annexure R-2), *“the blood was detected on Exhibit-1*

(rod); Exhibit-2A (Baniyan) and Exhibit-2B (T-shirt), were stained with blood stains.” Although, the investigation in this case is complete and charges have been framed on 02.08.2022; however, the material witnesses are yet to be examined including the eye-witnesses, who are the co-workers of the petitioner.

10. As regards the submission of learned counsel for the petitioner that the witnesses already examined have not supported the prosecution story; suffice it to say that the evidentiary value of the statements made by the witnesses shall be considered by the trial Court upon the conclusion of the trial and at this stage, no firm finding can be recorded. The petitioner is the sole accused in this case; however, in my considered opinion, he cannot be released on bail solely on the basis of long incarceration in jail or on the ground that the trial is not likely to be concluded in near future; especially when the petitioner is being tried for a serious and heinous offence of murder of co-worker (Umesh Kumar) of the complainant. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR (Criminal) 254***, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on

bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

11. As per the settled position of law, gravity and seriousness of the offence is a relevant consideration for the purpose of grant of bail. Further, the Hon'ble Apex Court in ***Neeru Yadav vs State of Uttar Pradesh 2014(16) SCC 508***, observed as under :-

"A society expects responsibility and accountability from its members, and it desire that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious matter ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

12. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

13. Keeping in view the gravity and seriousness of offence and also the likelihood of petitioner tampering with the prosecution evidence and

even absconding, no ground for grant of regular bail to the petitioner is made out. The present petition is accordingly dismissed.

14. Nothing stated here-in-above shall be construed as an 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 bail petition.

15. Pending application/s, if any, shall also stand disposed of.

August 23rd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No