

Date of decision: 12.01.2024

...PETITIONER

V/S

...RESPONDENT

Present: Ms. Anu Bala Garg, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.384 dated 15.12.2021 registered under Sections 148, 149, 323, 506 of Indian Penal Code (later on Sections 201, 325 and 307 of IPC were added) at Police Station Sahlawas, District Jhajjar.

2. The present case was lodged on the complaint made by Jai Bhagwan on the allegations that on 14.12.2021 at about 06:30 PM, after selling fruits, he was putting his remaining fruits in his godown, which is the house of Rajesh son of Lilu. His sons namely Anil and Aman were also assisting him. At that time, 5-6 persons came in a Maruti-800 car. Out of them, one person alighted from car and asked to give 1 kg apple. He asked to that person “brother, he has closed his shop” and asked to purchase from other shop. Upon that, said person went to his car and the complainant and his sons continued with their work. Thereafter, said 5-6 persons alighted from the car and one person assaulted him (complainant) on head with blunt side of *farsa*. Another

person assaulted him in his leg with iron rod. He shouted, then his son Anil came there and tried to rescue him. Out of those persons, one person assaulted his son Anil with iron rod and pushed him (complainant) down. All of them gave beating to him (complainant) mercilessly with *farsa*, iron rod and *bitta*. His younger son Aman ran away from there due to fear. His another son Anil, when raised noise for rescue, the assailants asked him not to tell anything about this incident, otherwise, they would kill him and his family members. Out of them, one person was Naseeb (petitioner herein) son of Ram Kunwar, resident of Matanhail and another person was Sachin, resident of Nogaon. Neighbourers came there and rescued the complainant and his sons from the clutches of assailants. Thereafter, all the assailants fled away from there with their weapons in their maruti 800 car. The injured were taken to Civil Hospital, Jhajjar and from there, the complainant was referred to PGIMS Rohtak. With the afore-said allegations, FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that although the petitioner is named in the FIR, but no specific role has been attributed to the petitioner. Moreover, invocation of Section 307 of IPC would be debatable as none of the injury is caused by sharp edge weapon and all the injuries suffered by the complainant and his sons are with the blunt weapon and the prosecution has not set up any motive to fasten the culpable *mens rea* of Section 307 of IPC. Learned counsel further submits that co-accused Sachin, who was named in the FIR along with the petitioner, has also been granted the concession of regular bail by the learned trial Court vide order dated 02.09.2023 (Annexure P-3). The case of the petitioner is at par with co-accused Sachin and the petitioner is behind the bars since 14.12.2022.

4. Per contra, the learned State counsel, on instructions from ASI

Sandeep Kumar, opposes the prayer of grant of regular bail to the petitioner on

the ground that petitioner is the main accused and the weapon of offence *farsa*, used in the incident has also been recovered from the possession of the petitioner. The petitioner is a habitual offender and he is involved in 03 more cases. As such, he does not deserve the concession of regular bail.

5. In rebuttal, learned counsel for the petitioner submits that co-accused Sachin, who has been granted regular bail by the trial Court was also involved in two more cases and the petitioner is on bail in 02 cases and he has been falsely implicated in those cases.

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 14.12.2022 and the investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 25.04.2022 and charges were framed on 12.05.2022. Trial of the case has not made any progress yet as out of 25 witnesses cited by the prosecution, none of the prosecution witnesses has been examined so far and the learned trial Court has also issued non-bailable warrants of some of the witnesses. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. Keeping in view the law laid down by the Hon'ble Supreme Court of India in '*Prabhakar Tewari Vs. State of U.P. and another*' 2020 (1) R.C.R. (Criminal 831) and '*Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another*', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Naseeb is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 12, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |