

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-12614 of 2024
Date of Decision: March 15, 2024

Nikesh @ Chhotu

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Bhuwanesh Lakhera, Advocate
for the petitioner

Mr. Amandeep Bidhan, Advocate
for the complainant

Ms. Geeta Sharma, DAG Haryana

Harpreet Singh Brar, J. (Oral)

1. Mr. Amandeep Bidhan, Advocate puts in appearance on behalf of the complainant and filed his Memorandum of Appearance. The same is taken on record.
2. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 70 dated 12.03.2023 registered under Sections 148, 149, 341, 506, 323, 325, 382, 307, 283, 115, 201 of IPC at Police Station Sadar Jhajjar, District Jhajjar, Haryana.
3. The present FIR was registered on the complaint made by the complainant Manish who narrated to the police that he is working at CFSL, Sunaria. On 07.03.2023 at about 10:00 p.m., he along with his brother Inderjeet and his co-villager Sandeep were going to their village in his Tata Nexon bearing No. HR-14Q-4435. When they reached near village Rankhanda, one Canter was parked in the middle of the road. When complainant came near the Canter, he saw that one Shamsher (petitioner-accused), resident of village

Rankhanda, Rajbir, nephew of Rajbir, Leele, Ankit along with 5-6 other boys were consuming liquor. Complainant asked them to remove their canter from the rasta but they refused to do so. Thereafter, petitioner-accused Shamsheer caught hold him (complainant) from neck and gave fist blows on his nose and right eye. Meanwhile, 4 nephew of Rajbir and Leele also came from Canter and inflicted iron rod blows on the back of head and on the elbow of his right arm with intention to kill him. Ankit also gave rod blow on his back. Another 5-6 boys gave leg and fist blows to the complainant. When Inderjeet, brother of complainant and Sandeep came there to rescue the complainant, then Shamsheer, Rajbir, nephew of Rajbir Leele and Ankit along with others attacked them with iron rod, kick and fists. Nephew of Rajbir tried to snatch his chain, however, the chain was kept in his T-shirt but the pendant was snatched by him. Ankit and Leele also snatched cash amount of Rs. 1900/- from his pocket. Thereafter, all the assailants fled from there.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 10.04.2023 and the other co-accused have been granted the concession of regular bail by the learned Additional Sessions Judge, Jhajjar vide Annexures P-4 to P-6 and more than 11 months have passed not even a single prosecution witness has been examined. The injury attributed to the petitioner is caused by blunt weapon and it would be moot point to be determined by the learned trial Court during the course of the trial whether the petitioner was having the intention and knowledge to breach the threshold of the offence under Section 307 IPC.

5. Per contra, learned counsel for the complainant submits that the petitioner is the main accused and he has given the injury which was declared

dangerous to life and the weapon used in the offence was recovered from his possession. The accused persons were under the influence of alcohol and after inflicting injuries they had even snatched cash amount of Rs. 1900/- and gold locket from the complainant and the accused have parked their Canter on the public passage and obstructed the path of the general public.

6. Learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is habitual offender and is involved in two more cases. However, learned State counsel could not controvert the fact that out of 20 PWs, none has been examined so far.

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 10.04.2023. The trial of the case has not made any progress till date as none out of 20 PWs cited by the prosecution has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of trial.

8. Keeping in view the law laid down by 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 others, 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.

9. In view of the above, the present petition is allowed and petitioner-Nikesh @ Chhotu is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned

trial Court/Chief Judicial Magistrate/Duty Magistrate.

10. 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.

(HARPREET SINGH BRAR)
JUDGE

March 15, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No