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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-18627-2024
Date of decision : 23.04.2024

Kamal Petitioner

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.178 dated 24.05.2022, registered for the offences punishable under Sections 323, 34, 341 and 506 (Sections 148, 149, 325, 307 and 120-B of IPC added later on) at Police Station Sadar Ballabgarh, District Faridabad.
2. As per the contents of the FIR, it has been alleged as under:-

“To, SHO, P.S. Sadar Ballabgarh, Sub: For deadly attack with weapon on my father and attempt to kill my brother. It is requested that I, applicant Rahul s/o Mohan Lal, R/o Vill. Ladoli, Ballabgarh. Yesterday, on 21.05.2022 at about 8:45 PM, my father and my younger brother Akash, aged 17 years both were returning to home from the shop at Fatehpur Biloch, when they reach near Harijan Chopal, Fatehpur Ladoli then Sanjay s/o Harpal,

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Ravi s/o Chanderpal, R/o Ladoli and Kamal and Vivek s/o Anil, R/o Bhupani, Faridabad, who were already present there in the Baleno Car and were standing outside the car while waylading and stopped the bike of my father. Then, without asking anything attacked my father with the iron rod and axe. My younger brother Akash run for the help, then they chased him but he ran towards the Fatehpur while crying. Till then, all remaining three persons attacked his head and other parts of body and made him severally injured and they ran away thinking him as dead. My brother came back with few people till then they fled from there. My brother informed me regarding the incident by using to phone of other persons. I immediately reached on the spot with my brother and nephew. I taken my father to the Govt. hospital. Where after, providing first-aid referred to the B.K. Hospital. I informed the police from the govt. hospital, Ballabgarh dialing on 112. Thus, he was referred to AIIMS Trauma Centre, Delhi on account of receiving grievous injuries on head. He has been kept on ventilator due to the grievous injuries. Today, on 22.05.2022 a surgery on head has been done. Till now, his condition is serious. Thus, it is requested that strict action be taken against the accused persons and protection to the life and property be provided to me and my family members.”

3. Counsel for the petitioner has invited attention of this Court to the finding recorded by trial Court declining the bail plea of the petitioner which is based upon the status report filed by prosecution as recorded in para 7 which reads as under:-

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“So-far as first argument of counsel for accused regarding maintainability of subsequent bail application is concerned, there is no doubt that after dismissal of previous bail application, successive bail application is maintainable if there is change in circumstances but no such change in circumstances has been brought to the notice of the court in this case. After going through the contents of status report, it reveals that even if as per investigation, co-accused Vivek had inflicted head injury, which is stated to be dangerous to life, this fact cannot be ignored that present applicant was also part of unlawful assembly at the time of commission of offence and was having knowledge of committing of offence because he has been specifically named by complainant in the FIR, and as such section 149 IPC is fully attracted.”

4. He thus submits that once it is the case of the prosecution itself that the life threatening injury was caused by Vivek and not the petitioner, the petitioner ought to have been treated at par with other co-accused Amit Pal who have been granted concession of regular bail.

5. Custody certificate has been produced by learned State counsel. The same is taken on record. As per the same, the petitioner is behind bars for more than 01 year, 03 months and 13 days and has no criminal antecedents.

6. Keeping in view the parity and the incarceration already suffered by the petitioner, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

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7. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

23.04.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No