

CRM-M-24384-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24384-2024
Reserved on: 12.08.2024
Pronounced on: 30.08.2024

Irfan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tushar Gautam, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
346	03.08.2023	Sadar Tauru, District Nuh, Haryana	148, 149, 323, 302 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from reply dated 28.06.2024, which reads as follows:-

“That the instant FIR came into being on the basis of complaint made by complainant Sadeeq, wherein he sought for legal action against Sabbir, Jahir, Aamir, Irfan, Sohrab, Mukeem, Shakeen, Arshad, Sethi, Tofiq, Sahukar, Sagar, Yahaya, Umar, Umarshed, Sajid, Sadda, Junaid, Musarif, Shabir sons of Illi, with the allegations that he is running a hotel with name and style of Sahun at Sohna-Tauru road and above named persons namely Saggar, Umar, Shakeem, Sabbir and Shabir son of Illi used to visit his hotel for having food and on being demanded money, they used to hurl abuses and the above named persons were nursing grudge due to the elections dispute, as their family had failed in Sarpanch elections. The complainant further stated that on 03.08.2023, at about 11.00 p.m., he along with his son Wasim and one Nasim was present at his hotel, when said Saggar, Umar, Shakeem, Sabbir and Shabir son of Illi etc. came to their hotel and they forcibly pressurized him to prepare the food, but he

(complainant) had refused to serve the food to them due to promulgation of Section 144 Cr.P.C. in the area, upon which accused persons hurled abuses. When he objected their act of abusing, said Saggar loudly proclaimed that they (complainant) were behind losing of elections by them (accused), for which they will be lessened today, upon which the above named persons/accused telephonically called other assailants at the spot with Lathi, iron rods and batons etc. Thereafter, Sabbir gave Lathi blow in the head of his son Wasim, Shabir son of Illi gave iron rod blow in the head of Wasim, Shakeem gave wooden baton blow on the shoulder of Wasim, Saggar gave Lathi blow in the waist of Wasim, Ummar gave baton blow on the legs of Wasim and Jahir and Sethi pushed Wasim on the earth and gave injuries to him with fist and kick blows. The complainant further stated that when his another son Nasim tried to save Wasim, accused Sahukar gave baton blow on left hand of Nasim, Sadda gave Lathi blow on left elbow of Nasim, Tofiq gave baton blow in the waist of Nasim and Junaid gave Lathi blow on the legs of Nasim. The complainant further stated that on hearing the commotion, their co-villagers namely Sajid and Salmu, who were present in the nearby parking, came at the spot to save them. The complainant further stated that when he tried to save his sons Wasim and Nasim, Jahir and Sohrab caused injuries to him with slaps and fists, Sethi and Mukeem pushed him on the earth and gave beatings with fist and kick blows.

The assailants gave beatings to said Sajid and Salmu. The complainant further stated that on hearing the alarm raised by them for help, Wakil and Mustaq also came to save them and on seeing them coming, the assailants fled away from the spot after threatening to kill them. Thereafter, said Wakil and Mustaq shifted them to General Hospital, Tauru, where his son Wasim was declared dead and rest of them were medico-legally examined and due to severe injuries, they (complainant and Nasim) were referred to Medical College, Nalhad, where they remained busy in treatment. With these allegations, complainant sought for legal action against the culprits. On receipt of above information, instant FIR No. 346 dated 03.08.2023, under Sections 148/149/323/302 IPC was registered at Police Station Sadar Tauru, District Nuh and investigation was set into motion.

5) That during investigation, inquest proceedings under Section 174 Cr.P.C. pertaining to the death of deceased Wasim Akram were carried out and autopsy on his dead body was got conducted. As per postmortem report, deceased Wasim Akram had suffered five external injuries i.e. an oblique bone deep lacerated wound of size 5.5 X 1 cm. over left occipito parietal region, the margins of which were irregular, bruised and the scalp tissue was extruding in places and on dissection, a diffuse subscapular hematoma was present on left occipito parietal region and double linear fracture of parietal bone was found and one fracture run down the parietal bone and continued into the temporal bone, a reddish contusion of size 5 X 4 cm. was located over right occipitoparietal region and on dissection underlying tissues were found ecchymosed, a reddish contusion of size 4 X 5 cm. located over an area of right iliac fossa and on dissection, underlying tissues found ecchymosed, a defuse subdural hemorrhage of size 7 X 10 cm. over left hemisphere, another subdural hemorrhage of size 1.5 X 2.5 cm. was present over left temporal region and a diffuse subarachnoid hemorrhage of size 7 X 8 cm. was present over

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left temporal region. The cause of death in the present case was opined by the Board of Doctors to be head injury and nature of weapon was opined to be heavy blunt weapon. However, viscera was preserved for chemical analysis. The parcels handed over by Doctor were taken into possession."

4. The petitioner's counsel argues as follows:-

"That the State Govt. has taken a stand before the Ld. Sessions Court that the statement of injured Sajid was recorded under section 161 Cr.P.C. and in his statement under section 161 Cr.P.C. he has stated that the petitioner has given the danda blow on his head i.e. injured Sajid. However, the injured Sajid was medically examined by the doctor in Community health Centre Nuh on dated 03.8.2023 and as per the MLR of the injured Sajid (Annexure P/2) he received two injuries (1) Pain in Left cubital fossa, No any visible injury seen (2) swelling over left parietal region of size 4.0 x 3.0 CM and nature of injury was shown simple. Thus even as per the said MLR, there is no head injury.

Furhter the opinion of the Doctor on the injury of Sajid was obtained by the police and the opinion of the Doctor on MLR No. DS/Tauru//369/2023 dated 03.08.2023 of the injured Sajid is reproduced below regarding the injury for kind perusal of this Hon'ble High Court: -

Opinion for MLR No.DS/Tauru/369/2023.

As per treatment records of SKHM (Nuh) provide by 1.O., no Radiological abnormalities found. So may be count as simple sustained with blunt."

Thus, there is no head injury and the injury is very simple and even the said injury is not attributed to the petitioner in the complaint/FIR but he was named in the said case subsequently on the statement of injured Sajid under section 161 Cr. P.C. due to oblique reason.

Further, the petitioner and Mukeem have filed the joint application for grant of bail. As per the stand taken by the respondent /State before the Ld. Sessions Court that the name of accused Mukeem was there in the FIR who had inflicted kick and fist blow to complainant Saddique. He was granted the bail by the Ld. Sessions Court and the bail of the petitioner was rejected. Thereafter, now as per the reply filed by the police, co-accused Mukeem has suffered a disclosure statement that Irfan had inflicted the injuries to deceased with a danda.

As per the status report on 8.9.2023, co- Arshad had suffered a disclosure statement that his daughter namely Arfina told him that his brother Liyakat had quarrel with complaint and his sons at Sagoon Hotel over the issue of money to be paid for having dood at the hotel, upon which he alongwith Hamid, Sahrukh, Irfan, Samman, Sakeem, Sohrab, Sethi, Tofiq son of Jafu, Samin @ Sameen, Sabbir son of Ilyas and Yahaya armed with lathies and dandas. As per the para 6 of the said status quota, Irfan has not attributed any injury to the injured or deceased or any specific role of the petitioner.

It is submitted here that five injuries were found on deceased person as per FIR and status report filed by the respondent state and all five injuries

are attributed to co-accused and no injury is attributed to the petitioner.

It is further submitted that even as per the complaint and FIR, the petitioner has been named in the FIR but no specific role whatsoever has been attributed to the petitioner. No injury was attributed to the petitioner either to injured or deceased. Further he has also not inflicted any injury to the complainant and his son or deceased.

That no recovery was affected from the petitioner. Investigation has also been completed by the police. It is submitted here that like the petitioner no specific injury was attributed to co-accused Mukeem and the petitioner and co-accused have filed a joint application for grant of anticipatory bail before the Ld. Trial Court and the co-accused Mukeem was granted the extraordinary relief of anticipatory bail to co-accused Mukeem vide order dated 04.04.2024, annexure P/3 by the Ld. Additional Sessions Judge, Nuh.

The case of the petitioner is also on similar footing because the petitioner has not inflicted any injury to the deceased or injured and neither any recovery has been affected from the petitioner. Therefore, in the present case, custodial interrogation of the petitioner is not required. Further, the petitioner is willing and ready to join investigation and to cooperate to the police in the same.

That co-accused Sameen, Shahrukh and Hamid have already been granted concession of anticipatory bail by the Ld. Additional Sessions Judge, Nuh vide order dted 26.9.2023 and 11.01.2024.. Lateron Sameen was also granted the regular bail by the Ld. ASJ, Nuh vide order dated 04.04.2024. Furhter Liyakat -co-accused was also granted the concession of regular bail by the Ld. ASJ, Nuh vide order dated 18.04.2024, annexure P/7. Similarly co-accused Arshad and Sahukar have also been granted the concession of regular bail by the Id. ASJ, Nuh vide order dated 21.12.2023 and 08.04.2024,P/8 and P/9 respectively. Further the role of the petitioner is on equal footing rather on better footing then to the abovesaid co-accused persons who were granted the concession of anticipatory bail and regular bail by the Ld. Additional Sessions Judge, Nuh. The petitioner is first time offender and not previous convict.”

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State opposes bail and submits that Sajid was also an accused and his statement was not recorded under Section 161 CrPC. The State's counsel has referred to paras 14, 15, and 16 of the reply which read as follows:-

“14. That it is pertinent to mention here that after being granted interim anticipatory bail by the Court of learned Additional Sessions Judge, Nuh, co-accused Mukeem and Sazid joined the investigation of present case on 19.05.2024, upon which, they were formally arrested in the present case and were released on bail on their furnishing requisite bonds. While

joining investigation, they suffered their respective disclosure statements and admitted their guilt and got demarcated the place of occurrence. In his disclosure statement, accused Mukeem also disclosed that at the time of occurrence, his brother Irfan (petitioner) was having a wooden baton, with which he had inflicted injuries in the head of victim Wasim. Similarly, accused Sajid also in his disclosure statement had disclosed that at the time of occurrence, his brother Irfan (petitioner) was having a wooden baton, with which he had inflicted injuries in the head of victim Wasim. It is pertinent to mention here that supplementary challan will be submitted against two accused along with above said five accused.

15) That during investigation, statements of witnesses were recorded and facts of the case were also verified on 08.06.2024 and from the available evidence and verification of facts, no incriminating evidence has been found to effect the arrest of cate Saggar son of Chand Singh, Yahaya son of Hanif, Shabir son of Illi and Tofiq son of Jafru in the present case. From the verification of facts, it has also been found that no person with name Tofiq son of Jakir has been found in the village and it was only mentioned under the impression of Tofiq son of Jafru.

It is further submitted that as per the investigation conducted so far, petitioner/accused Irfan and Shakeem are yet to be arrested, as they kept on hiding themselves to evade their arrest in the present case and their whereabouts could not be known despite sincere efforts being made by investigating agency. There are total 26 accused in the present case, who were either named by complainant or their names have come in the disclosure statements of arrested accused, out of which 14 persons/accused were found innocent and one person has been found to be non-existing during investigation/verification. Out of remaining 11 accused, nine accused have already been arrested in the present case and two accused are yet to be arrested in the present case.

16. That it is submitted that in the present case, there are direct and specific allegations and sufficient evidence against petitioner/accused Irfan to have committed the above mentioned crime. He is specifically named in the FIR and statements of witnesses. Petitioner had actively participated in the commission of above mentioned crime. He was the member of unlawful assembly, the common object of which led to commission of above mentioned crime leading to loss of one human life and injuries to others. Petitioner had actively participated in the above mentioned crime and at the time of occurrence, he was having wooden baton in his hand with which he had inflicted injuries in the head of victim Wasim. A specific role has been attributed to petitioner in the present case and he is also specifically named in the disclosure statements of co-accused. The instant case is still under investigation qua petitioner.”

7. Given the above, there is evidence of the petitioner inflicting baton on the deceased. A perusal of the bail petition and the documents attached, prima facie points towards the petitioner's involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioner; this court refrains from doing so.

8. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

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9. **Petition dismissed.** Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.