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(207)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26682-2024

Date of Decision: 29.11.2024

MOHAMMAD AFTAB @ PHOOL MOHAMMAD

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Mayur Karkra, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in this 3rd petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.138 dated 04.09.2022 (Annexure P-1) registered under Sections 323, 341, 506, 148, 149 IPC (Sections 307, 325 and 201 IPC added later on) at Police Station P.S. Anaj Mandi, District Patiala.

2. The present FIR came to be registered at the instance of Ashwani Kumar son of Lakhmi Chand and the same reads as under:-

"Statement of Ashwani Kumar son of Lakhmi Chand, resident of House No. 291, Street No. 04, Bharat Nagar, Police Station Anaj Mandi, Patiala, aged about 20 years, Mobile No. 6239593470 written by ASI Mandeep Singh 2817, Police Station Anaj Mandi, Patiala regarding registration of case against Phool Mohammad, resident of Bharat Nagar, Chanchal resident of Dhakka Colony, Rehan; Ramjan, Inder Singh and one unknown person, address not



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known for the offence under Sections 323, 341, 506, 148, 149 IPC has been received at the police station through SC Davinder Singh 93, the subject matter of which is as mentioned below: Stated that I am resident of the above mentioned address and doing the work of labour. Yesterday on 03.09.2022 at about 09:30 PM, I after taking meals from the house had been smoking cigarette while standing at the kiosk near Bharat Nagar vending shop, then a white coloured car while going nearby me from 16 No. Railway Crossing to Railway Station, then the car riders by revolving their car from ahead desired to struck the same in me, then I while saving me came on a side, then the car riders stopped their car, then from the white coloured car, 06 Hindu Gentlemen youth got down, who were handing kirpans and rods in their hands, out of whom one was Phool Mohammad, resident of Shakti Nagar, second was Chanchal resident of Dhakka Colony and remaining 04 were Hindu Gentlemen youth, who were about to come towards me, then I saw that the above mentioned persons will commit dispute with me, then I was about to escape from the spot, then on account of slipping of my feet, I fell down, then all the above mentioned persons after coming started giving beatings to me. Phool Mohammad with the iron gear fitted on the rod carried in his hand started giving blows on my both legs and Chanchal by giving blows with the iron rod carried in his hand on my both legs as well as other parts of the body started causing injuries and other four boys, out of whom Inder, Rajwan Rehan and one unknown person were there. There were swords in the hands of Inder and Rajwan and there were dandas in the hands of Rehan and other unknown boy. Inder with the kirpan carried in his hand inflicted injury on my forehead as well as head. Rajwan also inflicted injuries on both my legs with the kirpan. Rehan Hit with the danda on my left arm and other unknown boy also gave beatings to me with the danda and they kept on giving beatings to me while lying waylaid. Immense blood started oozing from my legs and other parts of body, then in order



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to get rescued from them, I was about to run after getting up, then they again after encircling me again gave beatings to me with fist blows. They had been extending threats to me that you roam with our enemies, lesson thereof has been taught. On hearing my hue and cry, a number of people started gathering, then they while extending threats to me that we will see you again, along with their respective weapons fled away towards the side of Railway Station. During this dispute, they have inflicted injuries on my forehead, head, left arm, muscle of right arm, nose as well as both my legs, then in the meanwhile on hearing my hue and cry, the passer byes made a phone call at my house, on which my brother in law (Jija) Horay resident of Lahori Gate, Patiala had got me admitted at R/H, Patiala for treatment, where I am under treatment. On reaching at the hospital, I came to know that on account of injuries inflicted by the above mentioned persons, my right leg has been fractured. Appropriate legal action may kindly be taken against the above mentioned Phool Mohammad, Chanchal, Rehan, Ramjan, Inder and one unknown person. I have got recorded my statement in the presence of my above mentioned brother in law Honey, heard, the same is correct. Sd/- Ashwani.”

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The co-accused of the petitioner namely, Rizvaan, Gopal Arora and Surinder Singh alias Inder have been granted the concession of regular bail by this Court vide orders dated 12.04.2023 (Annexure P-8) and 08.05.2023 (Annexure P-9). Chanchal another co-accused is absconding and has been declared a proclaimed offender. As the petitioner was in custody since 23.09.2022 but none of the 13 prosecution witnesses had been examined so far, the trial of the present

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case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail.

4. A status report dated 25.11.2024 by way of an affidavit of Manoj Gors, Deputy Superintendent of Police (City-II), Patiala has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that the petitioner was one of the main accused having given injuries on the legs of the complainant which led to insertion of rods in the legs and a consequential 10% disability. Therefore, he was not entitled to the concession as prayed for. He, however, concedes that the petitioner was in custody since 23.09.2022 and that none of the 13 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, the petitioner is a first-time offender, in custody since 23.09.2022 and that none of the 13 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. Three co-accused namely, Rizvaan, Gopal Arora and Surinder Singh alias Inder have been granted the concession of bail. In this situation, the further incarceration of the petitioner is not required.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Mohammad Aftab @ Phool Mohammad son of Mohammad Soeb is ordered to be released on bail subject to his

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furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

9. If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

29.11.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No